

JUDGE MARTIN PENCE

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Martin Pence as a young farm boy in Kansas decided he would be an attorney. He describes his childhood and education in Sterling, Kansas, followed by the achievement of his early goal with his graduation from the University of California Law School at Berkeley.

After a brief career in San Francisco, Judge Pence accepted a job offer in Hawaii. He tells of his early years in Honolulu, and his move in 1936 to Hilo where he opened his own law office in 1937. His interest in politics on the Big Island, his struggle and success as a Democratic candidate, and his eventual appointment as a Circuit Court judge in 1945 are related.

Following his appointment in 1961 as a United States District judge, Judge Pence returned to Honolulu. He discusses several cases of interest that he has handled over the years and shares anecdotes regarding prominent local and national personalities.

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INTERVIEW WITH JUDGE MARTIN PENCE

At his chambers in the Prince Kuhio Federal Building, Honolulu, Hawaii

February 5, 1986

P: The Honorable Martin Pence

S: Alice Sinesky, Interviewer

P: It has always been my theory that naturally, "As the twig is bent, so the tree is inclined," but in nearly every person's life, if they've lived a full life and moved around and changed, that it's divided up into the childhood and whatever those influences were--and that includes the education they got. And then, all of a sudden, school is all finished and that was just preparation.

And the next thing is--what do you do with what you have? What do you do with what you are? And from there on, the developments which take place may come from you, but oh, how they're influenced by the slings and arrows of outrageous and wonderful fortune. And luck, luck, luck--if you don't have that, no matter how good you are, you can go down into failure. On the other hand, as Iacocca showed, if you have the luck with you, all of a sudden you're the greatest person in the world.

But you must have, as you know--you've seen it in your own life--you must have the ability to be able to utilize whatever your capacities are and to help that luck. What is it they say? The tide taken at full, and so forth, you can go out to sea and your ship goes right ahead. So that you have to have all of the aspects; ability, integrity and luck in order to succeed in any area.

S: Right. So starting with your parents, you get certain values and so forth, then you get the education and by the time you reach a certain age you should be prepared to do something with it.

P: And that's what you'd better do. Briefly, my background. My father was a farmer in Kansas. His father came from Indiana in the 1860s to Kansas to homestead 160 acres. At that time a person who had 160 acres could live and raise a family on it, because at that time if a man was

worth \$50,000, he was a rich man. A very rich man if he was worth \$50,000.

S: That was after the Civil War then?

P: After the Civil War they came out of Indiana. My father then grew up there in Kansas and he went to the little red school house through the eighth grade. And my mother--her family moved to Kansas out of Missouri because here was a homestead area. You could get 160 acres. And the difference between the two was--my mother was a Gash G-A-S-H, her mother was a Blades. Isn't that nice? Gash married Blades and so on. On my father's side it was Pence married Hancock.

But my mother--her parents, well, her whole family always had a wandering foot, and so her father and mother came out there--homesteaded a farm. She, too, went through the eighth grade, but she on her side back in Missouri had some contacts which gave her, through some relatives in Kentucky, a little more education than eighth grade. She went, I think, for a year to a young ladies' finishing school or something like that, like the first year of high school. But, basically, then she was back to Kansas because at that time children were an asset. They did the work on the farm without getting any cash pay. So my father and mother, basically, didn't have formal education, but both of them were really voracious readers.

S: But in that day, that was about the average.

P: It was. I remember reading, "If you only go through high school, your increased pay will be so much, and if you go through college, you'll be able to earn so much more." Imagine. I remember seeing that tacked up in the old post office in the little old town of Sterling, Kansas--population then 2,000; population today 2,200.

Then it had eleven churches--no Catholic church--but it had a Negro Baptist church and every other type of church you could ever think of; the United Presbyterians, the Reformed Presbyterians, the Presbyterians--just to give you three.

S: Were your family churchgoing people?

P: My mother, yes, was a Methodist and my father had started out a Congregationalist, but along the line he saw that not every preacher was as holy as the preacher represented, and he became disillusioned with the church per se, and he lived a life in which he believed in the religion of good deeds. And he helped his fellow man, that was part of his religion.

Well, there were many things that occurred, naturally, when you grow up in a small town as a farmer's son. You

learn to be self-sufficient insofar as you always have a garden, and you always work on that garden, and you have to pick the potato bugs off potato plants one by one and drop them in kerosene and so on like that. My father believed and my mother believed that if you were going to succeed, you were going to have to work. As he said to me, "You weren't born with a silver spoon in your mouth, and what you get out of life, you're going to have to earn for yourself." And that's the way it was.

S: Did you have brothers and sisters?

P: There were four of us; two sisters older than I, and myself and then a ratoon crop brother came along eight years later. We're all of us still alive.

S: Wonderful.

P: I have a sister eighty-six, another one eighty-four, and I'm eighty-one and my brother is now seventy-three. So then you go to the high school there and there happened to be a small Reformed Presbyterian college there, so you go there just because it's cheap. You go there and then up to Kansas University.

And my father always believed that farming was a hard life. And it's never changed. It's a hard life today, because we still have three-quarters of a section back there, and we have a tenant farmer on it and he has to have now over 1,000 acres in order to be able to make any money out of the equipment he has to have in order to raise wheat. And as he himself told me last year, "I've had four children--three sons--and every one of them, I told them, 'Don't be a farmer. You just work too hard and you get so little out of it insofar as monetary...'"

S: Right. And we read so many sad stories especially these days about what's happening to the farmlands and the farmers. So your family encouraged you.

P: My father wanted me to be a professional man. So it came to pass that when the time came, I went out to California, went to the University of California at Berkeley and there--because wheat at that time was a dollar a bushel and a dollar a bushel won't put anybody through school--so like so many of them I worked all the time I was going to college.

S: I had read somewhere that you made up your mind at a very early age though that you wanted to be a lawyer.

P: A lawyer, that's right, and so I always went down that road. And then--so through with school--take the bar in 1928 in California--passed the bar and I'm a lawyer. Went into a

small firm there that did a lot of personal injury work and went from that to another firm that did a lot of personal injury defense work and casualty work for the Fireman's Fund Insurance Company. And John Black was the name of the attorney, and it was while I was working for him in 1930 that Ralph Clark came there in San Francisco. Ralph Clark was then president and general manager of the Home Insurance Company of Hawaii, which is now the First Insurance Company of Hawaii. At that time it had a new building on King Street between Fort and Bishop on the makai side and now we have the big Bank of Hawaii complex there. At that time on the corner was E. O. Hall and Son; in the middle of the block was the Home Insurance Company, a two-story building, and on the end was the Bishop Trust Company. That comprised that whole block on the makai side. And Ralph Clark came up to San Francisco looking for someone to handle their claims department, to be the claims attorney, the claims manager of this small claims department, casualty claims department.

And just because luck--I had a friend in one of the insurance company's claims departments that the Home Insurance Company reinsured their insurance through, and he calls me up there in June, 1930 and says, "Do you want to go to Hawaii?" And I said, "Oh sure, when do we start?" "No," he said, "seriously, the president of this company's down looking for someone. Come on over and meet him." I knew nothing of Hawaii except A: It had a volcano--I didn't know where or anything about it. I never thought of Hawaii except in the time they were playing the slack string guitar or hearing someone plunk on an ukulele.

I knew they raised pineapples out here because Alice Kamakila Campbell had a daughter who was going to Cal and her name was "Pineapples" (nickname) McFarland. She was part Hawaiian and a beautiful, beautiful young woman who ran around with young Hearst in his big Packard twin-six roadster there, just off campus. Now that's practically all of my acquaintanceship and I didn't know her.

So I went over to see Ralph Clark and I was drawing at that time for John Black all of \$125 a month. I was so unimpressed by going to Hawaii that I didn't even mention the fact to my closest friends that I'd been over talking to somebody about Hawaii. About three weeks later, my friend there called me up and said that Clark wanted to see me again. This time he said, "I've interviewed fifty-four other persons, and here I make you this offer." Well, this offer was \$225 a month plus a one-year contract and a round trip ticket to Hawaii.

S: Well, that was an offer you couldn't refuse, almost doubling your salary.

P: Well, and that was big money, really big money. My goodness, when I came down here, McInerny's--McInerney Brothers, men's haberdashers--was located at the corner of Fort Street at Merchant Street on the mauka ewa corner and you could buy a linen suit for \$15, complete coat and pants, pure wonderful linen, \$15, and for thirty-five cents you could have it laundered, starched and pressed. A pair of shoes, \$5; a wonderful dinner, \$1.00. The values, what money would buy then was fantastic. Be that as it may.

S: And here you were, a bachelor living well.

P: I hesitated though, because I had so many friends and so forth there in San Francisco. My goodness, why I could go down with the gang to Gu Su Ting's, off Grant Avenue and where we could even get ng kai (gar) pei--a wonderful old Chinese drink--for twenty-five cents a glass.

S: Well, San Francisco's my second favorite city, so I know what you mean.

P: The only thing at Gu Su Ting's they wouldn't let us do, was dance on the tables.

S: Well, they had to draw the line somewhere.

P: Exactly it.

S: But you still hesitated about making the move over here?

P: Yes, because in San Francisco I had a lot of contacts. But then what's a year in the life of a young man aged twenty-five? So I accepted. And I remember it well because this is absolutely what occurred. I was met by a young man who was going to be one of my assistants down at the wharf when I got off the Malolo (August 6, 1930) and we were going out this old road right out here. At that time the Ala Moana Boulevard was just a twenty-foot wide roadway that meandered out across the swamps towards Waikiki along the shore. We were going out to the Niumalu. [2011 Kalia Road] I was going to stay with another young man hired at the same time for a different department of the insurance company. He and I were living together at first, but he came down hired the same way I was, a year contract, round trip ticket, sales department of the company.

So I was riding in the rumble seat of this DeSoto roadster. We went through the city dumps. Where the Ala Moana Shopping Center is now was all swamps, dumps. There were squatter's shanties and a few things. But the smoke from the burning dumps went across the road. But I remember looking up at the greenery of these hills in August--there was something about the blue of the sky and the white fleecy

clouds, the air and all--and saying, "I'm never going to leave here." And that was final. I knew that I was never going to leave here. So it came to pass.

In 1933 I took the bar here and I passed the bar here. So I was admitted in California and admitted out here. And we were in the middle of the Depression. The Depression in Hawaii was felt, I think, the least of anywhere in any other portion of the United States. The maximum impact down here was that--of course, they closed the banks one time and we had wooden nickels down here for a short time--but a ten percent decrease in salary. Very, very few indeed were those who were laid off. The public servants all, just a ten percent cut. Some of the school teachers got, I think, a fifteen percent cut, that's all there was to it.

S: Well, at that time it seems to me Hawaii was more self-sufficient than it is now, less dependent on mainland tourism or whatever.

P: We were not dependent on mainland tourism at that time. We had the Niumalu Hotel which consisted of...I think it was six or seven duplex houses which were the rooms of the hotel. You had the Halekulani, which was very small. I have no idea of how many rooms it had, not very many. You had the Royal Hawaiian, which was brand new in '29 and how many rooms did they have? Two hundred and fifty? Then you had the old Moana which again had about the same number. Those were the only hotels. Then across the street you had one, oh, rooming house sort of, used sometime for the overflow of hotel guests.

S: It seems to me around that period they had more like apartment cottage hotel types.

P: They had a whole area out there. There were a lot of houses out there that you could rent. For example, I know that after the Niumalu, we moved into the corner of Willard Place and Beachwalk, three of us young bachelors and had a cottage there and paid \$5 a gallon for okolehao, best local made out of rice. You had lots of those. You had lots of girls come down in the summer time. Four, five or six would get together and get a cottage together. All of that area had small cottages instead of hotels. They didn't have apartment houses then.

They had just finished the Ala Wai Canal, I think about '28, '27 or '28, something like that, just finished that. And all of that Waikiki area, makai of the canal, was still fresh coral. You could buy it at that time for three and a half cents a square foot. But there it was.

S: How was the social life for a young bachelor in those days?

P: The same as it is anytime.

S: Great!

P: Great! There was always plenty of school teachers coming down, plenty in the summer time particularly, there was always a big influx of gals who were down here for vacation and Waikiki was the same as it is now. And what used to be the old phrase, "Are you living in Waikiki or are you married?"

S: That said it all.

P: That said it all, but Waikiki was just simply the playground, that was all. But you didn't have the fantastic crowds that you have now. You didn't have the thousands of hotel rooms and all that stuff. You had the Waikiki Tavern which was down--today down there by Kuhio beyond the Moana--just beyond that. On the beach, the Waikiki Tavern was there. [2425 Kalakaua Avenue]

You had Young Hotel downtown. You had Blaisdell Hotel downtown. And the Young, what did you do? You had dancing under the stars at the Young or you could go to the Royal if you had a little more money. Or you could go dancing under the banyan tree at the Moana. Or you went out dancing under the stars at Waialae. They had Friday night dances at Waialae where they rolled back a canvas and you could dance under the stars. If it rained, they rolled it over. And that was just about the places you went to dance. But you had all of the local gals, and the gals that weren't local. And you dated as you saw fit. It was a great place then, and I had no idea, not the slightest idea, of getting married because I was having so darn much fun not married.

It was during 1931 that I met my first wife. She was a student at the University of Hawaii. At that time I think she was a senior. I remember her well because the first time I met her I said, "This girl's dangerous--she's too damn marriageable." She was the one woman I knew who was smarter than I was. And she was.

But we dated off and on for eight years. Lucy Elizabeth Powell. An only child. Father was an engineer out of the University of California at Berkeley who had gone into the Army as an ex-ROTC engineer in the first World War and had stayed in. Was a captain out at Schofield in the twenties when he realized that in peacetime the Army was never going to get him anywhere. So having an engineering degree, he left the Army and got a job at Pahala as their civil engineer at Pahala. Harry Lawrence Powell. Her mother (Velma) was a school teacher who went to Pahala and became the principal over there and when he left Pahala and came back over to

Honolulu, he became at one time the traffic engineer for the City and County of Honolulu. Her mother went on and stayed in the school system. She was the principal of Royal School at one time and the principal of Kaahumanu school. When the war broke, that's where she was.

S: But he didn't want to go back to the mainland either. He was sold on Hawaii, too.

P: Yes, they were staying here. So, as I say, I stayed with the Home Insurance Company as their claims manager through 1935. All the time I couldn't help but remember what had happened back on the mainland to some of the people that I knew. When companies get in sad financial shape, particularly insurance companies, casualty companies, the first area they look at is the claims department, because claims pay out and never bring in a dime. That's the theory at least.

And I didn't want to be at the mercy of a corporation. I had been all over the Islands, naturally, in my job. And of all the Islands, I liked the Big Island, and I had compared my own legal acumen with those who were practicing law around here, and I felt I could do all right as a lawyer. So I went over to the Big Island. I wanted to lay a foundation, so I went over there and worked for Doc [William H.] Hill for one year. Doc Hill got his nickname because he sold Woolworth-type eyeglasses throughout the plantations at one time, peddled eyeglasses, and wound up with the name of Doc.

But Doc had one love in his life and that was money and the power that money would get him. And Doc would have sold his wife down the river for a dollar.

S: Well, when you went to work with him, what kind of business was he in?

P: He had the Realty Investment Company and he also had insurance and I handled all of the insurance facets for one year and then opened my own law office January 1, 1937.

S: This was in Hilo?

P: In Hilo, the Professional Building there. And hired as a secretary a Japanese girl, a Hilo girl, fresh out of Cannon's School of Business, a high school graduate, Cannon's School of Business, Mutsuyo Ushijima, and I paid her thirty dollars a month. At the end of the year I was paying her eighty dollars a month. And Merrill Carlsmith, of the firm of Carlsmith and Carlsmith, at that time it was father, Carl S. Carlsmith; son, Wendell Carlsmith and other son, Merrill Carlsmith. Merrill Carlsmith, I think, is a year younger than I, maybe two. I'm not sure.

But we knew each other well. We fished together and so forth. I did a lot of spearfishing, both with the slingshot spear and the twenty-foot spear--something that nobody sees anymore--the kind where you dive down--have a spear that has a half-inch square steel shaft about three feet long--this twenty-foot long spear and dive down twenty-five or thirty feet--go down another twenty feet for a big fish. I enjoyed all of the areas; over by Chinaman's Hat, all off Waikiki where we used to go out on the reef and spearfish, dump nets for fish and lobsters, using then gasoline torches over our back to shine at the fish at night. Off Pearl Harbor and all the rest. Off Mokuleia, diving down onto the reef and going through the tunnels in the reef and coming out in the open ocean. Luckily, again you have to have luck, luckily, no eel ever hit me as I was diving going down through the tunnels and so forth.

S: But in those days you didn't have the scuba gear.

P: No, it was all skin diving. I got so that I could hold for over two minutes--no problem at all. I could go down thirty-five feet with no problem at all. But you did it all the time. And it was while I was over here that I first learned about the Japanese martial arts and I always liked to keep in good shape. So I studied for a year to see if I was any good as a Japanese wrestler, not the sumo. But I found this--I was then 28 or 29 and these young Japanese 18 or 19 were good. I was in tiptop physical shape, too. The only time in my life, I remember, that I ever had the old washboard muscles across the stomach. But I learned that at 18 and 19 you can recover very fast. A five minute rest and you're ready to go again. At 29 already old age was taking its toll physically, you were slowing down. But I was always in tiptop physical shape.

S: Yes, with all that physical activity.

P: Then over on the Big Island. I'll finish up with Mutsuyo Ushijima whom I paid thirty dollars a month when I hired her. About the end of the year, Merrill Carlsmith stopped me one time on the street and said, "Hey, Penny, I hear that you're paying your secretary, Japanese, eighty dollars a month." I hadn't told anyone that, but she had, and she told it with pride. And I said, "Well, that's true." "Well," he said, "you know Mrs. Fujikawa (I think that was her name) has been working for us seven and a half years and we only pay her seventy-five dollars a month. Don't you realize what you're doing to the whole labor situation here?"

Well, that was the attitude at that time towards all those of Japanese extraction on the part of all of the haoles. You didn't pay them as much because they didn't need as much. Why the whole family could live, et cetera, et

cetera. Well, I never felt that way, very frankly. And I was among the first, subsequently, to take on as a partner one of Japanese extraction. I think there was just one other haole over here that had a Japanese young man as a law partner and that was because he married a Japanese girl. I didn't marry a Japanese girl. I married Lucy Elizabeth Powell, in 1938, November 19.

I found that I did have an aptitude for trial work and I found that a lot of people on the Island over there heard about me as a lawyer, but I wanted more exposure. The reason I went over there was because, very frankly, they had such wonderful hunting, one of the reasons. They had sheep up on the mountain there, on Mauna Kea, estimated at between twenty to forty thousand feral sheep, sheep where their ancestors were domesticated but they themselves were wild. They had been brought here by Vancouver in 1793 and released along with the wild cattle, the goats. And just as Parker Ranch was started by the wild cattle--old Sam Parker was given the right by Kamehameha I to kill the cattle for their hide and tallow--the wild cattle--the plains and hills of Waimea, the Big Island.

In 1933 as part of the CCC [Civilian Conservation Corps] program the government had built, with the young men of the Big Island, a wire fence completely around--for all practical purposes--completely around Mauna Kea at about the 7,000 foot level to keep the sheep from coming down into the cattle ranches on all sides. It was a sheep-tight fence, hog-tight fence. It's still up there to this day. You'll see the fence that runs around there. But most of the mountain--to keep the sheep up on the mountain. And it was great hunting. And if you like sheep, it was greatest eating. Those mountain sheep have no fat as we would know fat sheep. If they had a layer an eighth of an inch wide across the hip, the rump, that was a fat sheep. They were walking so much all the time they don't have the lanolin flavor.

The nearest thing I ever found to the wild sheep of Mauna Kea in flavor was in Greece, because there too you'll see up on the friezes the same damn sheep that are still out there in the rocky hills of Greece. You'll see the same shepherds except they now wear wool overcoats instead of togas. But the same crooks and they, too, live on browse, the Greek sheep. They, too, are not the kind of thick, heavy fat that New Zealand or America produces as fat lamb. I know I loved it. You did a lot of hunting on foot. You did some on horseback. You went up from 7,000 to 12,000 feet. Whatever you shot, you skinned and carried back down. And that went on from 1936 until...I think the last time I was up after sheep was 1974. I think it was.

S: Aren't there a lot of wild pigs over in that area, too?

P: There were always wild pigs, but they were something different. If you got a good crack at one, you shot it. In the rain forest you had more wild pigs, and the Portuguese taking their dogs. They would go for the wild pigs in the rain forest and they loved them because they could make sausage, Portuguese sausage, out of that wild pig. They still love that very strong flavor that comes from the pigs eating the fernroot. So I kept in good, top physical shape all the time.

But I wanted more exposure as a lawyer. So I decided in 1938 that I would run for office. I debated at first as to what office I would run for. House of Representatives? No, it would have to be county attorney because that was my field. And one must know the political life of Hawaii at that time was 99.44 percent Republican. I remember when I was at the Home Insurance Company, our manager would come around to us before election day and he'd say to the assembled group there, all the employees, "I'm not going to tell you how to vote, but remember that all the Republicans--they are what we stand for--they're to make sure that our business is successful and if you vote for the Republicans, you're voting for your jobs. But I'm not telling you how to vote."

Over on the plantations it was even more marked. To be sure, they never told them how to vote, but I know it was true on the Big Island that they would have a voter turnout on the plantations usually of about 95 percent. The reason they would do it--the plantation would send around trucks and cars to pick up every voter and make sure that they went to vote on election day.

And they had someone there in the truck or the car to give them a sample ballot and show how they ought to mark their ballot. And every plantation manager was a Republican. There were only just a handful of Democrats in the Legislature over here--some came from what was then Kakaako and some came from the--down here by the old Love's Bakery down here--the old county jail here. Right down here--the big curve in the road. I'll tell you later.

So there were only a few. In 1933 McCandless [Lincoln] was elected as a delegate to Congress, but that was simply because of the big upset in 1933 when everything everywhere went Democrat. Then two years later, as I recall, McCandless was then replaced by a Republican--Houston, [Victor] I think it was. Yes, Houston. The Republicans were in power in Hawaii; they always had been.

You go into the plantations over there and the managers were always the head of the Republican precinct club there,

every one of them. They took a very active position there. All but one of the county supervisors and the clerks, auditors, the like, all of them were Republicans on the Big Island except one. And that was a young man from Kohala who was a supervisor and called himself a Democrat, but he ran with the Republicans. I mean he campaigned with the Republicans. He had a good job with the plantation, and he was a Democrat, but his name was on the list of those to be elected by the Republicans.

Delbert Metzger who later became a United States district judge, but whose story...I wish you had his story. Because he had a fantastic story of success and failure, success, heartbreak. He was long on common sense. He was a man of courage. But anyhow, Delbert Metzger wanted to become governor. So did McCandless. And the only reason that he didn't become governor was because as Metzger said, he had once gotten into a row with a man by the name of Walter Dillingham, the original old Walter Dillingham, over the building of a section of the Hilo breakwater.

The story was simple. Metzger had come out of the Colorado School of Mines and finally wound up in Hawaii as an engineer and was given the job to survey the Hawaii Consolidated Railway, which was the railway that ran out to Paauiilo towards Honokaa and ran down into Puna to pick up all of the sugar from the plantations all around the Hamakua coast and down into Puna. The most feasible thing was to use a narrow gauge railway because they had to go in and out of all the gulches, but Dillingham found that he couldn't finance narrow gauge railways on the mainland, so they built a broad gauge railway. So Metzger surveyed the route--so Metzger at first practically started up the railway.

Then came the building of the Hilo breakwater and Dillingham got a permit for the rock mine, a boulder mine if you want to call it that, out in the Panaewa Forest, near Hilo...

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P: ...the tremendous boulders that they needed for the breakwater. And Metzger was one of the engineers who built the breakwater for the old man. Then came the second segment. Metzger told the story. He asked Dillingham if he was going to bid on the second. Dillingham indicated that he didn't think he would. Metzger then said, "Well, I'd like to bid on it myself and if I get the bid, can I use your quarry to get the boulders?" And Metzger said that Walter told him yes, that he could.

Dillingham changed their minds; they bid. Metzger put in a lower bid and got the bid to build a second segment of the breakwater. Metzger went to Dillingham and said, "Now,

I'd like to use your quarry as you promised," and Dillingham told him flat out, "I never promised you any rock out of that quarry, and I won't."

S: So this was all verbal.

P: Whereupon, Metzger called him a g-- d--- liar and tempers flew and, as Metzger said, Harold was there and heard what Metzger had to say to his father, and Harold used his influence to keep Metzger from becoming governor of Hawaii many years later there in the thirties. So Metzger, however, was over in Hilo and he was the circuit judge in Hilo and Metzger was a Democrat.

I remember March of 1938 attending a meeting of the Democrat party. There were four people: Metzger, judge; the clerk of his court, a Portuguese; a Portuguese lawyer and myself. That was the Democratic party.

S: Did I misunderstand you? Did you say that Metzger was an engineer?

P: Yes.

S: Well then, how did he get into law?

P: Well, after--he made a lot of money on that--I'll finish up on that--he built the second segment and he went out to a cliff face out beyond Honakaa at Kukuihaele where there was a landing, and in fact he quarried the rock off of the face of a cliff way out there and swung it down to a barge and took the barge then right in--towed it right up to the breakwater and he had a better deal that way than he would have had if he'd had to haul it by truck. And so he made a heck of a lot more money. He got it practically free--big slabs that came right off the face of the cliff. Made a lot of money and decided that he didn't want to be an engineer anymore--he wanted to be a lawyer--went back to law school and came back out to Hawaii and stopped there on the Big Island.

S: So we'll throw in another quote like, "Sweet are the fortunes of adversity" or something like that.

P: And so it happened that there was a chap who had run as a Democrat for the board of supervisors and had been elected two times, Tom Cunningham, part-Portuguese, married to a part-Hawaiian gal, and Tom--he wanted more than anything else to be chairman of the board of supervisors. He ran a transfer company--did hauling--and he hauled for a lot of plantations. They told him, the managers told him, "Tom, we'd back you up in a minute to be chairman, but you're a Democrat and we can't. If you were a Republican, we could back you up. If you weren't a Democrat."

So in 1938, he decided he was not going to run as a Democrat because he was sure he couldn't be elected to be chairman of the board of supervisors against Sam Spencer, part-Hawaiian, very popular. He couldn't do that. So he was going to run as an Independent. And he wanted me to come along as an Independent. He got one other Portuguese to run as an Independent.

Metzger said to me then that evening when I said, "Well, good Lord, look here, Tom wants me..." Metzger said, "Penny, never forget the party is bigger than the man." And I saw that he was right and I ran as a Democrat against the incumbent William H. Beers, part-Hawaiian, been in there for twenty-nine years, been county attorney and he had A. G. Correa [Antone G.] as his deputy. Metzger had run against him and lost--run against Beers and lost; Russell ran against him and lost; one other lawyer from Hilo had run against him and lost. But I had something they didn't have.

I saw that there was a change in the basic electorate over there. The plantations were full of young men and women of Japanese extraction who had not been wooed in the slightest by the Republicans because they were Japanese. There was a young Japanese out of Oberlin, a Hilo boy, gone to Oberlin, graduated magna cum laude, went to Harvard and came back a lawyer. Admitted in 1933 and he was practicing. I went to him and I said, "Tom, [Tomekichi Okino] I'll run for county attorney and I'll make you my deputy if I'm elected. So we're actually running together. You'll be the first in the whole territory to have a job like that."

Because at that time the county attorneys handled all the criminal work, they also represented the county in their civil side. They advised the board of supervisors. And it paid \$4,400 a year, but you were allowed to take private practice. And so one always has to have breaks and I got some breaks--publicity.

The Inter-Island Steam Navigation Company decided that it wanted to acquire a piece of oceanfront right next to the Kona Inn over in Kailua where the Third Circuit Courthouse was located. The county had over an acre right there next to the Kona Inn, right on the water and they wanted that. So they wangled a deal through the board of supervisors of the county to exchange a quarry, ten acres up on the upper road. There was no shortage of rock there in Kona, but they were going to give ten acres for one. And it was going to go through and I heard about it. And I immediately went over to Kona and started a public clamor against it--to give this lovely area here--and so on down the line. And it came to pass that it was killed. And I was the one who was blowing the trumpet the loudest, and I got publicity.

Then again the Inter-Island Steam Navigation Company wanted to increase the freight rates between Oahu and the Big Island and so I got a few... had some friends among some of the small merchants and appeared before the Maritime Commission, one of the marine boards in charge of rates and so on, screaming that it cost more already to ship a brick from Oahu to Hilo than it did to ship it from San Francisco to Hilo and they wanted to raise the price. Well, it was all cut and dried I found out--there wasn't going to be any change in the application--they were going to get it. That's the way things worked. But nevertheless I got publicity.

Then I heard that there was a Filipino who was up in the county jail--all of this was in the spring of 1938 after I had announced that I was going to run for county attorney as a Democrat--and he had been arrested, but he had never appeared but once down before the district magistrate and that was to have his arraignment--meaning his formal charge--continued. So he had been up in jail four months and nothing had taken place from the day he was arrested except the one time he was in court to have his arraignment continued. That was all--he was lying up there a forgotten man.

S: So there had been no formal charges...

P: No, there never had been formal charges. So I pointed the finger at--this is the responsibility of the county attorney--and the poor and the ignorant aren't getting the justice that they're entitled to. I got publicity. So, you know, blow your trumpet, et cetera. On July 4, I quit practicing law and started being 100 percent politician. With Okino I went to every bon dance, I went to every plantation camp, I went to every Japanese wedding or Japanese funeral. I spoke at bon dances, I shook hands, I went up into the coffee fields. I devoted myself exclusively to house to house, person to person, all around the Island.

And with Okino we went out for the young Japanese vote and our work was so successful, that came the primary of 1938 I led my opponent by over 1,000 votes and missed outright election by only thirty-six votes. In other words, if you got more than fifty percent of all of the votes cast at the election--not just for your job--you were elected outright. I missed out by thirty-six. So in the general, I went around looking for the "lost thirty-six votes." And ran away from my opponent again in the general by over 500 votes, even though this time I was the only Democrat left. And all the Republican plantation managers were down at the voting booths. They did everything they could to defeat me.

To give you an example of the way Republicans controlled everything, we went over to Naalehu to hold a rally. When the Republicans held a rally, they held it in the school gym. Now that school gym was not available to the Democrats. The

Democrats were given a little Japanese clubhouse about the size of this room, and Beatty, Jim Beatty, the manager, would stand outside the clubhouse door taking down the names of every plantation employee that went inside the Democrat meeting. Stood there. They knew their names were being taken down.

I went over to Kohala to see J. Scott B. Pratt, the second, I think it was, the manager of Kohala plantation. "Mr. Pratt, is this an open plantation?" "Why, of course, it's an open plantation. We don't attempt to keep our employees from voting any way they want to vote. But I want to let you know I'm chairman of the precinct club and I'll do everything possible to defeat you." Oh yes, it was an open plantation.

So I go out; I get my workers. In about a week I get a telephone call from one of them, "Hey, we no more can work for you." "What's the matter?" "Oh, Mr. Pratt he says we no more can put out your cards and talk for you. So we no more can work for you."

So I go over to see Mr. J. Scott B. Pratt. "Mr. Pratt, didn't you tell me this was an open plantation?" "Yes, it is." "Well, I just understood that you gave instructions that none of the employees can work for me. They cannot talk for me, they cannot disseminate--give out my cards, my program and all the rest." "Well," he says, "that's true. You see, when our employees were working for you, it gave the impression that the plantation was supporting you and, of course, we're not, as you well know. And so we couldn't permit that misapprehension. You understand, don't you?" Well, of course I understood; that was just the way they were playing. But I won; I won anyway.

When you are forced--it was a big upset--I can show you the newspapers--it was a big upset. I was elected, the Democrat against the solid Republicans, but when you are forced to work against adversaries like that--adversity--you build up your own machine. So two years later the Republicans had A. G. Correa. Beers didn't run. Correa was nothing--I knocked him out in the primary and I elected the county auditor and the county treasurer. They were my boys. And two years more went by and then I had a supervisor, my boy, and two years more went by and my boys were running the county. We had a majority. Because you have to do it. The chairman of the board of supervisors was a Democrat, one of my boys.

S: But your role was still that of county attorney?

P: I was still county attorney.

S: But you just built up this nice network.

P: You build up your friendships. I remember Tom Cunningham one year was running to be reelected, the primary. We had two on the board of supervisors and we needed one more, but the only candidate left was a Portuguese Democrat who had been a road foreman and didn't have brains enough to pour sand out of a boot. So my boys said, "Are we going to back up this Portugee?" I said, "No, he's too heavy. He's a big fat slob. He's too heavy. We can't carry him. We'll just have to wait." Then came one of my ace workers. He says, "Hey, (Cunningham is now a Republican) Cunningham is out saying I (meaning my worker) that I'm out fighting him." "Well, have you been?" "No, I remembered what you said. I kept my mouth shut." I said, "Well, we still won't, we still won't." Then came Okino--"Hey, Cunningham now says that I'm out fighting him." "Well, have you been?" "No, I haven't been--that damn Portugee," and so forth. The next thing--Cunningham can't keep his mouth shut--he's half-Portuguese--and "Pence is out fighting him" and here I've been completely laying off.

So I said, "All right now. We've got to go because if we don't, then he says, 'See I beat Pence.'" And I can still remember we went out to beat Cunningham with nothing and then you didn't have TV--you didn't have all of the radio. You went to precinct rallies and you saw the people face to face and you talked to them face to face. I remember one part of my attack on Cunningham was, "You notice that Tom Cunningham never wears a hat anymore, but I saw a picture of Tom about five years ago, one of the pictures there in the county building, and there he was with that lovely old square hat. Some of you remember he used to wear that square hat. And I've often wondered--why is Tom not wearing a hat anymore? And then it came to me--if you listen to what he's telling you--this county board of supervisors can't run without him--his every other word is I, I, I. You'd think that the only reason that you have any county government at all is because Tom Cunningham has done it all himself. And then it came to me why he doesn't wear a hat--he can't find one big enough to fit that fat head of his." Well, of course, that was just one of the little plays. We beat him because he beat himself. When you ridicule like that, very few people can stand it without blowing all over the place. And then people start laughing.

Hilo, when I became county attorney, was as wide open as any place in Nevada ever was. Hilo--they had the elected sheriff system--no police system then. And Hilo had six houses of prostitution; it had, right off Mamo Street--thirty

feet right alongside the Mamo Theater--any time after ten in the morning you could go into a little building there and they had a Las Vegas type crap layout--we call it Las Vegas now--and the house would take your money and fade you. You could gamble against the house, and they ran every day, until nobody was in in the evening. You went two blocks away and there was a house, at four o'clock every afternoon you could have any type of card game--the house had the tables there--the house ran the layout.

At that time the girls paid \$25 a month each for the privilege of carrying on the house of prostitution. They had a good group of girls that were on sort of a circuit off the mainland--they'd come in every so often--it was all well-organized--six houses. There were slot machines, one-armed bandits, in the country club, in the Elks' Club, in the stores. They cost \$5 apiece paid off to the sheriff--and they had a cock fighting arena just outside of Hilo at Paukaa that seated 1,500 under roof and on the weekend after paydays they would hold a Saturday and Sunday big, big, big fighting cock mains with crap tables and food. It was a gala affair. There were several others around the county, but that was the biggest and best.

And when I ran, the chap in charge of the local Hilo vice, a lieutenant sheriff, was also the district court practitioner: not a full-fledged lawyer, but just a district court practitioner. But Beers had allowed him to be the district court, police court, prosecutor. So you had a police lieutenant, pardon me, sheriff's lieutenant, who was also prosecutor. And he, too, was as crooked as everyone else. And any time that you would find that some of the crooks had run a scam on someone--like the old opium game, the old fake medicine game or the big false diamond game, and so forth--whenever they'd made a score on some local yokel you could tell it. Because the next morning these crooks would be down there hovering outside the office of the lieutenant who was in charge of the local vice. And then in comes the complaintant and he listens to the story and says, "Oh, yes, those crooks--we'll arrest them all because they've clipped you out of \$3,000 or \$4,000 (or whatever it might be), but this is opium that you're supposed to be handling and we'll go after them, but of course, you were part of this conspiracy to bring in this opium, so we'll have to charge you, too. Now do you want to go ahead with it?" This kind of stuff. This was just part and parcel of the crookedness and the payoff of the sheriff's department.

Beers himself wasn't involved with any payoff. He just didn't pay attention to it, that's all. Everything was the sheriff's--and everyone with the sheriff was crooked--and they all made sure that the plantation problems were properly taken care of and that was the way things were run.

Then came a new county attorney. Now when I was in private practice, at one time I represented all of the prostitutes because they were all having tax trouble and I straightened out all of their tax problems. But this goes back to when I grew up--you had integrity--it was expected of you. So I took steps to shut down all of the vice. The law said so. And at one time I'd even represented the chap who had the slot machines. All I did was laugh at him. Too bad Joe, I'm county attorney now. Let's start moving them out.

Now, I had no staff. I was a maverick. The sheriff was solid Republican along with everybody else. So I wrote letters saying, "I am advised that this is going on at a certain time and I would suggest that you raid it at a certain time," and so forth like that. And I advised that the slot machines were located at so-and-so and you investigate and, if they are, you will make the necessary arrests, et cetera. Well, he's over the barrel, because if he doesn't, he's afraid that then I will be able to all of a sudden be indicting him for all of the crookedness, et cetera. So it came to pass, by attrition, that they all went and then there was a move toward a police system and I was one of those most solidly in favor of that. I was not sad to see the change.

S: Now when you were in private practice in Hilo, did you ever have any business with the plantation owners and so forth as far as representing them? I mean, who were your clientele then?

P: I used to say my business was the Woolworth Five and Ten --meaning it was of the ordinary people with low income, you see. The plantations had Carlsmith, Carlsmith who represented all of the big companies, who represented all of the banks and so on. They had Harry Irwin and Tiny Smith. They were the two other haoles and I was the other haole. The people had problems. I had the knack that I could talk to any race, on any problem, and so forth, and they didn't go broke when they came in to see me. And the result was that I steadily built up a practice of little people. That's really what it was. They had problems, too. Oh, yes, I got married on November 19, 1938. When I proposed to the gal that I dated off and on for eight years, I said, "I don't have any money. I spent it all on this campaign, but I have a job. I'm going to be county attorney, so we'll eat regularly. Will you marry me?"

S: But she'd been in Honolulu while you were over on the Big Island.

P: Yes, she was in Honolulu. But she'd gone up to Alaska, for a year up there as an exchange teacher. And she nearly got married up there to a bush pilot, but for thirty-five

years thereafter we were very, very, very happily married. She was smarter than I was.

I hadn't had a vacation. So in 1941--campaigned in '38, elected two years, then reelected in '40--so in '41 Lu and I decided--she wanted to introduce me to a lot of her relatives in California because she had lots of them on her mother's side--and she had never met my parents--I wanted to introduce her to them.

So we went back to Detroit and I got a car and then we drove down to Kansas. My father and mother were still alive, and we drove down to Mexico. Lu and I drove around there for six weeks. And Mexico was just one road going into it, that was out of San Antonio going to Ciudad Victoria, through Monterrey, to Ciudad Victoria over to Tamazunchale, then up to Mexico City. We went around Puebla, Taxco, Morelia, on up to Guadalajara, just driving with an objective that she had set up, mainly. "We'll go to places where they have their own little factories. If it's going to be glass or if it's going to be serapes or if it's going to be ceramics, we'll go to that place." Just wandering around. And we did. And came back out and got back here on December 4, 1941.

I was going to go hunting that weekend and she knew it. I loved, always having loved, still do love, not only sheep hunting, but bird hunting in the fall, and Parker Ranch had great areas over there, and so she knew I was going to go bird hunting.

And her father wanted to see a football game here in Honolulu on Saturday, December 6, so I went back to the Big Island so I could go bird hunting December 6 and 7. She stayed over here to go to the football game with her father.

S: That didn't happen to be the University of Hawaii and Willamette game, the Shriners' game, did it?

P: It could have been. I don't remember. So I was over on the Big Island when the war broke. Now there's no one, I think, who can't tell you everything they did on December 7 because it's one thing that's etched. What were you doing when you first heard--it's an old story--you can tell me what you did and I could tell you exactly.

S: That's why I could tell you when that football game was. Someone else had referred to it. Exactly, everybody does remember.

P: I knew nothing about it. I was out in the fields, up at four-thirty in the morning and driving forty miles out to the fields, hunting with a Chinese friend and our two dogs. We

finished, got our three pheasants each by noon, and were coming back by the Volcano House. And they have over there the military rest camp and as we came along coming up from Pahala, there by the rest camp all of a sudden about noon, here's a soldier out in the middle of the road with a rifle telling us to halt. "What's your name and destination?" Going to Hilo. My name is so-and-so.

We went around a curve in the road. There was another one out there. "Hey, this is crazy." I'm talking to my friend Johnny Kong. "This is crazy. What kind of maneuvers is this?" "What's your name and destination?" Told him. He said, "Well, go slow around the next curve because there's a guy up there who's a little bit flighty." What's this all about? Go around and sure enough there's this guy out in the middle of the road. "Halt. Get out of the car." We got out of the car. He looked in the car and his voice almost broke as he screamed, "What are you doing with guns in the back of the car!" Well, I was getting a little bit fed up and I said, "If you'll notice, there are two dogs back in there, too. If you'll notice, those are shotguns. If you'll notice, those are hunting dogs, and if you want to see in the back of the trunk, we've got six birds. That's what the guns are doing in the back of the car."

Well, that got through to him. "Proceed." This is crazy. Around the next, here's another one. "What's your name and destination?" We drive up by the old Volcano House, and right there before you turn into it, there's another soldier with a rifle. I said, "Hey, let's go in here," because my good friend Nick Lycurgus, his father old Uncle George ran the Volcano House, and I'll find out from Nick what the hell's going on. This is the craziest maneuver I ever heard of. So I went to see Uncle George Lycurgus. I go in and the Volcano House is just seething with women and children from the military camp. They moved them out and put them all in there as if at any minute the military camp up there in the middle of nowhere is going to be bombed.

And then, "Where's Nick?" "Oh, Nick's out on guard duty." Then I knew things were serious. "Oh, Pearl Harbor's been bombed, we sunk all of their carriers, they sunk all of ours; our battleships are sunk, we sunk all of theirs." Nobody knew anything. Nobody knew. So we found out why it wasn't maneuvers. We went down to Hongo's Store on the way to Hilo. And here's a guy out in front. "Pull over." And a lieutenant comes over and he recognizes me. And he's there and here comes a soldier saying, "There's a bus coming down the road." And the lieutenant says, "Well, if they don't stop, shoot them." This is Sunday about one o'clock. The bus comes down the road and stops--there's a group there--a Sunday bus taking the Japanese up there to the Hongwanji Temple in Hilo. Well, they proceeded.

We get to town and I knew that a certain service station was always open and we needed gas, so I drove over and here was a chap by the name of Pete Beamer who owned Beamer's Store. I said, "Pete, hi, what're you doing this morning?" "Oh, I was down at my store (sort of a hardware store). I was selling candles, batteries and flashlights and marking up all my stock. I've been through two wars before, and I know everything I have's going to be in short supply. And, you know, I found some stuff I marked up at the time of the first World War." Now that was what he was doing--out to make all the profit he could right off the bat. Well, that was Pete Beamer. Well, Pete--he always wanted to squeeze a dollar as long and as hard as he could. That was Pete Beamer.

I drove out to the airport. There was nobody around the airport. No soldiers. I drove over to the wharf. This was about two-thirty in the afternoon. There was nobody around the wharf. It wasn't until four o'clock that they had one soldier over at the wharf with a rifle, for what it was worth.

Luckily for Lu, Kaahumanu School was taken over as sort of an emergency headquarters, and she and her mother got on the telephone switchboard for doctors and everything on Sunday. And she stayed with her family over here until she discovered that a whole group of the Hawaii county politicians, my fellow politicians, had been caught after attending the football game, too, and there was a special plane going to take them back, because the county government still had to carry on, even if we had martial law. So she got herself declared to be a necessary rider on that plane and came home.

We had something that I don't know if you ever heard about. We had throughout the Islands--I don't know how it was on the other Islands--we had what was known as the Hawaii Rifles, a 100 percent volunteer militia of the local men. The only thing the Army did was give us guns and ammunition, but everything else we procured ourselves. We bought our own khaki uniforms, et cetera. It was sponsored by the Army and the territorial government. It was purely militia. So I was among those over there who joined the Hawaii Rifles.

S: This was throughout the Islands?

P: I think it was. I started out as a private and moved up to sergeant. And I remember one item so well. We were having maneuver and the objective of this platoon of mine was to take a certain little hill up there. So the lieutenant who had some training in ROTC came around to me and said, "You will charge right up that way." I protested. I said, "Look, they'll be firing. Then we'll be popped off. But from this ravine that we're in, if we go down here, there's a lower spot and I know we can get much closer before we have

to charge." He said, "Nope, you charge right up there. That's our objective and you're going to take it and you're going to take it the fastest." Well, he left and came the kickoff time. I didn't charge up there. I took my platoon down that ravine and went up and nobody knew that we were down in there. We kept low till we charged out and when the maneuvers were all over and they had the critique, mine was the only platoon that reached its objective and the only platoon that survived. And the remark of the lieutenant was, because he didn't dare say anything because we were the only ones that survived, "Well, in war you have to figure you're going to lose some people." I know that if I had been actually in the militia and the same thing had taken place, I know that I would have had no compunction in getting rid of the lieutenant, because it would have been him or all of us. But you run into that.

But we never had to fight, because when Midway came along, I don't know how it was, but all through Hilo over there, we were out in the boondocks, Hilo knew that a big thing was shaping up near Midway. Knew that this was going to be a big, crucial naval battle before it ever occurred. With the utmost secrecy, but everybody knew.

S: They felt...

P: No. We discussed this. We've got a big one coming up, we've got a big one coming up near Midway. They knew where it was going to happen. So when it happened, we knew then that the Islands were never going to be invaded.

S: That was the turning point.

P: No question about it. But the military didn't know that. Military, the one thing they always did believe in, and that is, don't give up any power. They would never have given up martial law, because they wanted to run things. That aspect of the military and the local population was something I never liked and it was bad. You had your provost judges over there and you had them in Honolulu who were just tyrants. That's all they were. We had Mickey Marcus as a provost judge over there. Mickey Marcus, Colonel, Lieutenant Colonel when I first met him, Mickey Marcus. Later on he was enshrined as an Israeli hero because he had gone over and gotten himself killed under an incognito name as he was helping out the Israelis. But he was always the big "I am," Mickey Marcus. I did my best to help him out because he said, "Why it's easy to handle civil cases, criminal cases. Criminal cases you just line them up and you say to each one of them without even reading the charge, 'Are you guilty or not guilty?' You have the name and charges before you, but you don't read them the charges--guilty or not guilty? And then you fine them. Or you throw them in jail. Then they say, 'Not guilty' and you turn to whoever's the arresting

officer or the military officer, 'What are the facts?' And the guy recites them. 'What have you got to say?' 'Guilty as charged.' 'Double everything.'" Everybody pleads guilty.

I found out that Mickey Marcus had come down out of New York. He had a degree from Columbia...

END OF TAPE 1/SIDE 2

March 20, 1986

S: Over in Hilo, in World War II, with martial law...so if you'd like to pick up from that point, that'll be fine.

P: With his law degree he went to work on Dewey's team in New York and apparently, or so he said, assisted in the prosecution of many of the cases that made Dewey [Thomas E. Dewey 1902-1971] famous and then I was informed from sources that I consider reliable that when he came down to Hawaii he went into General Green's office, General Green [Thomas H. Green] then being the military governor of Hawaii, and notified Green that he was down here because he expected to become military governor. Well, you can imagine how Green felt about that announcement. But Marcus needed something to keep him busy while--this was an inference, while Marcus was pulling the right strings to become military governor--and so Green's office huddled together and found that the best way to take care of Marcus was to send him to Siberia--that's their term--so they sent him over to Hilo to be provost judge.

He had some problems in Hilo because he showed favoritism to some of the girlfriends of some of his officers in dispensing his "justice," so I informed General Green that I was unhappy with the justice being dispensed in Hilo, and there came as a result of that--I didn't know that they welcomed my words because they wanted to make sure that Marcus was properly taken care of--and so there was an investigation. I don't know whether it was because of that investigation that he was transferred, but when he was transferred, it was to the Pentagon and, unquestionably, he did have a lot of political clout coming out of his connections there in New York.

We had after that, we had other provost judges and luckily one of them was a local lawyer, a young attorney, Frank W. Hustace, Jr., and he was everything that the others should have been but weren't. He now still practices law here but he doesn't work much because he's one of the trustees of the Ward Estate that has the Ward Center and all of that. He and his brother Edward are trustees. And then, of course, it was Metzger--but I won't go into all that--you must have that from other sources--the record's clear from Garner Anthony [J. Garner Anthony] and all the rest, that it

was Metzger who had become after the war--before the war he was over here, but he was U. S. district judge. He was the one who resistantly and insistently came down and sat in the old federal court house just to make sure that that court wasn't closed, even though by military ukase no actions could be brought in any state or federal courts. It was all under military rule under military courts. But he was the one who finally declared that what they were doing at the time they were doing it was all wrong, who fined Richardson [General Robert S. Richardson] and so forth. But you can read about that in other areas.

S: You admired Metzger quite a bit, didn't you?

P: Yes, I did. And I knew him well enough to appreciate his strengths and his few weaknesses.

S: And the fact that he was born in Kansas, too, made him a good buddy ? (laughs)

P: That actually never entered into it. It was just a coincidence. I don't think we ever mentioned that, even though we both knew that the other was a Jayhawker. That wasn't it. It was that he was there as a judge in a small town and I was there as an attorney and appeared many times before him. But I had known him before he was a judge.

S: Well, obviously you had a great deal of respect for the man.

P: If one knew him. He was not a Brandeis, he was not a Holmes, he was not a Frankfurter, but he was solid as a rock when it came to justice. He looked at the humanitarian side of every case and what he dispensed was a good justice with a legal foundation. And he had courage. In everything that he undertook, he showed it.

I don't know whether I should go into any more about the war because there's been so much of it. If you want a brief discussion of the way in which the military had blackouts, you can read about that. You had to have the curtains of your house completely and so forth covering all windows, so that not a bit of light came out at night. The thing that irked me then and still irks me and would make me say that martial law would be the last thing I would ever hope to live under again, is because the way in which--once the military had the power they fought in every way to keep it. As you are aware, they didn't want ever to give it up. If they had had their way, they would have even kept it on after the war, I swear.

You could hear the stories over here in Honolulu of how the provost judges worked. They were even more arbitrary and capricious than they were over in Hilo. You can get that

from other sources. When you say that power corrupts, when the military get the power, they have unlimited power to clamp down on all rights of all people. And they do it. I won't go any further except to say that I didn't like it then and I still abhor it.

But the war was over and I was still county attorney and my boys were then running the county. J. Frank McLaughlin, who was the judge there, had been moved over after the war started--had been made a United States district judge and he moved over to Honolulu and he had been replaced by Ray O'Brien, a former U. S. attorney. Ray O'Brien lived in Honolulu and only came over to Hilo by way of commuting there. And he would fly over on Sunday and hold court all week and fly back on Friday afternoon to Honolulu. He always wore a uniform--I think he was in the Reserves--he always wore a uniform when he flew over and flew back, but he took it off as soon as he got over to Hilo. There were those who said that it was because he didn't have to pay for it if he was in uniform. As soon as the war was over he resigned. So there was a vacancy.

Judge Metzger immediately told me that I ought to become the circuit judge of the Third Circuit over there. It paid, I think, about \$9,000 a year and with private practice I was making more than that as county attorney. And I wasn't sure that I wanted to be a circuit judge. You must remember that all appointments, governorship and courts, were made out of Washington and all governors and judges were appointed by the president, by and with the advice and consent of the Senate. I really didn't feel that I wanted to become a circuit judge, but Metzger knew me and knew where to touch and he said, "Martin, you have to take it. It would make your father so proud." My father back there in Kansas, in his seventies, and I knew it would. So I said, "All right."

Stainback [Ingram M. Stainback] had succeeded Joe Poindexter [Joseph B. Poindexter] and I knew Stainback personally and well. I got a call from him that he wanted to see me, so I came over and he said, "Regarding your appointment to the bench. I got word from Washington that there was an attorney in Hilo who objected to your being appointed because you were a self-confessed bootlegger during the prohibition days. Were you ever a bootlegger?" "Hell no, hell no. I bet I know who it was and I bet I know the story he told. I bet it was Carl S. Carlsmith." Because when I was with Doc Hill and I was a friend of his son Merrill, I'd been at his house for dinner and he was a great raconteur. He'd travelled everywhere and he loved to talk about his travels, and at one dinner table I told him my own story of how at one time I had controlled all of the San Martin Wine Company there in San Martin, California.

One summer, it was the summer of 1929, I heard from a friend of mine that the San Martin Wine Company had in storage, under bond, a tremendous amount of claret and that they didn't know what to do with it. It happened that I went down that way and inquired around and found out that it was true, that the San Martin Wine Company was owned by all of the wine growers in that San Martin area. All the stock was owned by those who sold their juice to the winery. And the wine company had five acres of grapes around the winery and they had a wine maker who was living on that area there and in their wine area were these big 20,000 gallon tanks stacked along and still under the roof, and that they had 92,300 gallons of seven-year old claret in those big storage tanks. And they had no market and they wanted to get rid of it.

So, I was working for the firm of McInerny, Reigh and Morris at that time who were plaintiff's attorneys in personal injury cases and the like, but on the floor below was the office of Eugene Schmidt. Eugene Schmidt had at one time in 1906 been mayor of San Francisco and he had trouble. After the earthquake he was reelected mayor, but after that he had some trouble over the French restaurant payoffs. The French restaurants were the houses of assignation in San Francisco at that time, and they were paying off to one known as Abe Ruuf. And Abe Ruuf was convicted in part of the scandal as taking money and so forth, but Gene Schmidt was not convicted. I don't know if he was ever charged. But he wasn't reelected mayor. But he made a comeback and he was elected supervisor for several terms. He had a lot of political weight around San Francisco.

I had met him because he was a client of the firm. And so I went down and asked him if there was any market for--this was all bonded now--this is nothing undercover at all--if there was any market for wine like that. And he said that yes there was. There was a lot of wine tonic being sold legally and that if anyone had good wine for wine tonic, there might be some money in it. So I told him I knew where it was and he said, "If ever you can tie it all up, come back and see me."

So I got leave from my boss and on weekends I went down there and weekend after weekend I got options from every last one of those farmer stockholders for the shares of the San Martin Wine Company until I had it all. When you read Lawrence's The Seven Pillars of Wisdom [T. E. Lawrence also known as Lawrence of Arabia] you see how at one time when you're filled with the almost depression that follows a victory. You have it, you become filled with it, everything you've strived for you've got and there's almost a big letdown at that moment. And I can still remember the last option was signed in what had formerly been the little weigh office where they had the platform scale where they'd run the trucks over it and weigh them. One of the farmer

stockholders--I was using his old steel-nibbed pen and I could look out the doorway--no, I wasn't, he was signing the option--and I could hear the scratching and I was looking out the doorway of this little shed and some white ducks came out of from where I couldn't see, came across the line of vision and disappeared. That typified my life. Here I was for a while out where everybody could see me--I'd come from nowhere out where they could see me and then I would disappear. I was really depressed at that moment when I had what I'd been striving for for three months to get, all of it, I had it.

So I had every option to buy. So I went back to see Gene Schmidt and told him, "This is what I have. I have all the shares of stock. I have complete control of the company. I can deliver." And he got very interested and said, "I'll see if I can get some investors together and we'll go down and take a look." So I made arrangements that they could go down and sample all the samples they wanted to, and they went down and came back and on Monday he phoned me upstairs and I went down. He said his group went down and they liked it and they were going to buy it and the price was \$50,000. And \$10,000 of that would be his, so I wouldn't get \$50,000. I'd get \$40,000. And to come back on Wednesday at two o'clock and we'd sign all the papers.

I'd never had anything. I was paying \$20,000 for it myself, I was going to net \$20,000. I'd never seen \$20,000 in my life. As I told you earlier, when I grew up, \$50,000 a man was rich.

S: And that was a hundred percent profit.

P: And that was a hundred percent profit for my labor. So Wednesday morning I go down to work and outside the building the newsboys are screaming, "Extra, extra, Gene Schmidt dead. Ex-mayor dead. Extra." He'd had a heart attack two o'clock that Wednesday morning and he died. He was the key and he was dead and the door was locked and nobody could unlock it. I know some of them tried to get a group together and they just didn't have the clout. My option expired and I never realized anything.

I told this at the dinner party with old Carl there and I told this to Stainback, and Stainback said, "Why everything you did was perfectly legal." I said, "Of course it was." He said, "Washington will appoint you." And it came to pass that in October of 1945 I received a certificate from Washington, D. C. that said, "In view of and so forth, relying upon the honesty, et cetera, I have here appointed Martin Pence a United States Circuit Judge, Third Circuit, Territory of Hawaii." Now in one sense I was a United States circuit judge, but actually it should have been just simply circuit judge...

S: Because it was still a territory.

P: Yes, we were a territory, but as a result of that I made, of all the circuit judges around the territory, I made Who's Who because I was a United States circuit judge. And Harry Truman signed it and Tom Clark attested as Attorney General. So that is how I became and why I became a United States circuit judge in Hilo, Hawaii.

At that time in 1945 the war was just over. The war regulation of prices was still in effect, but price controls went out and prices moved right on up. Unfortunately, the pay of the circuit judge didn't move an inch, \$9,000. And as time went on I grew poorer and poorer because prices went higher and higher. At that time the appointment was for four years, but my four years came along and there was no action out of Washington, so I decided I was through. So I wrote to the president saying that I wished to resign as soon as someone was appointed to take over. That was in March and I heard nothing, not even an answer back. So in April I wrote that I'm resigning on June 30, 1950. And so I resigned and went into private practice back in Hilo.

The years on the bench are just simply a matter of doing the best you can to be a good judge. I know that I was a good county attorney. I know that I was very successful as a county attorney. I have to draw back on that. When I ran for county attorney, one of my slogans was, "Don't let your Pence down." You see, you'd do anything to get votes. To this day people will say, "Is it true?" And I said, "It's true that I fomented the use of that 'Don't let your Pence down.'" And part of my campaign slogan was--the county attorney's office was simply losing too many cases. Their record was only fifty percent wins and losses. That was poor--they should win more--and if I were elected, I would win at least four out of five. And I went back the second time and said, "Pence promised. Pence produced." I had won an average of five out of six and it got better after that. And I wasn't picking and choosing my cases. I'd take them all down the line.

The way one campaigned--as I said, you went right out into the camps and into the houses and so forth--you had to set up an organization. At the time of the first campaign when we were in the general, waiting for all the returns to come in, we were ahead, no question about it, and there at the little campaign headquarters we had twenty-five cases of beer, we had six gallons of sake, and six bottles of American Ace liquor. We were waiting for the returns, we were ahead, but it wasn't on computer in those days, so here it was about ten o'clock at night and the returns were most of them in and we were ahead, but Pahala was not and Pahala had about 600 votes and if we got a big kick in the pants there, and I knew that the plantation assistant manager was right out at

the box trying to get as many votes as he could to defeat me.

And I had my man, Cabbage Takeuchi, isn't that a lovely name? He was a truck driver, he was my man there, he was my organizer. So we were waiting for the returns. If they didn't beat us by 200 votes, we were home free. There was nothing to it, they couldn't beat us, we were in. Give 'em the rest. So we were waiting for Pahala. The telephone rings about ten o'clock. It's Cabbage. He's crying, he's weeping. "I lost it." "How much, Cabbage, how much did you lose it?" "I told you I thought I could give it to you, but I lost it, I tell you, I lost it." "Cabbage, never mind, how much, how much?" "I lost it by twenty votes." "Twenty, Cabbage?" "Yes, I lost it by twenty votes." "Just twenty, Cabbage?" "Yes." "Cabbage, we win, we win. Cabbage come on in, come on in and celebrate." Within half an hour there wasn't a drop of liquor around the place--all gone, all gone.

The next day I was up in my office in the Professional Building and I had gotten one hundred half dollars and I had them in a drawer there because I knew what was going to happen. And sure enough--and also over here I had six bottles of American Ace, which was the cheapest whiskey you could get, and I had six bottles of good scotch. So everyone that came in and congratulated me and didn't ask for anything, I'd give them a shot of scotch if they wanted it just to celebrate. I wasn't drinking. And those that came in and wanted something I gave them a shot of American Ace. But if they came in and they wanted money--you know, "I worked for you and I spent all of this and so forth and can't you kokua me? Can't you help me?" And it was mostly, frankly, those of Hawaiian extraction who came in, and I would reach into the pocket of my pants and pull out a half dollar and say, "I know how hard you worked for me and I wish I could give you more, but look..." and I'd turn my pocket inside out, "this is my last half dollar and if I had more I'd give it to you, but here I give this to you." And I'd give them a shot of Ace. And when they were gone, I'd open the drawer and put another last half dollar in my pocket. At the end of the day I'd given away sixty last half dollars, the American Ace was all gone and one bottle of the scotch had only about three inches taken out of it.

S: So you could do your own market research without too much trouble.

P: Without too much trouble. Then I had promised over at Kalaoa, over in Kona, it was a strong Hawaiian box in north Kona above Kailua on the road to Waimea. It went past Puuanahulu, it only had about ninety votes, but it was strong Hawaiian and I promised them that if they'd elect me--not elect me--give me a majority of that box, I'd throw a luau for them. Well, I won that box and so I went over to give

them the luau. I told them that I'd supply the soda pop and the wine and you supply the food and I'll give you so much money for all of that. So the luau--my gosh, there wasn't one hundred--there was a mob there. And I noticed they weren't from Kalaoa. They were from way down at south Kona, they were way over at Puuanahulu. And they had prepared six hundred laulaus. And the price wasn't what they'd said. "Oh, you know, we didn't have enough of this, we didn't have enough of that." And that was the first and last and only time I ever ate dog because some of the meat in some of the laulaus was dog meat--no ifs, ands or buts. But I tried it and it was good, a little bit coarse, a little bit sweeter than pork. So that was one luau. See, I learned.

But I had promised down in Puna, along with Peter Arioli who was running as an Independent for the board of supervisors, that we together would throw a luau down there. Peter was a client of mine and a friend of mine. So down there we won the box and we threw a heck of a big luau and after it was all over I got the group that was putting it on and said, "How much?" and there in the presence, I paid their number one honcho, I paid him off in the presence of half a dozen others every damn nickel that they said they had paid for the luau.

So two years later I'm back down in Puna and some of the Hawaiians come up to me and they say, "Penikala, (that's my name for political purposes--you had to have a Hawaiian name then) Penikala, you know, we no think we can vote for you this time." I said, "What's the matter?" "Well," they said, "you know the luau." "Yeah, it was a good one, wasn't it?" "Well, you know, you never pay us for the luau." I said, "Wait a minute, what are you talking about? You were right there, right there when I paid Charlie. You know that I paid Charlie every nickel that you and all the rest of them asked for. You know that." "Yeah, yeah, but Charlie didn't pay us." Politics was wonderful. Politics was beautiful. I never threw any more luaus in any other campaign.

S: Politics was also an education.

P: It was in 1947 that my father died at the age of seventy-nine. But I went back before that. I went back in 1946 so that my father was able to walk down the streets of Sterling and say, "You remember my boy. You know he's a judge out there in Hawaii." In Hawaiya, not Hawaii, in Hawaiya. And Metzger was right. It made my father so happy.

I had taken my secretary Mutsuyo Ushijima, who by that time was Mrs. Nada, up to the circuit court as the judge's secretary. Well, the pay up there was at that time for a secretary about \$350 a month and that was in 1945 and she stayed with me all the way through. I was going back into

private practice and I knew that I couldn't pay \$350 a month, not just opening up my private practice again, with no clients whatsoever. So I arranged that she should become one of the clerks in the clerks office there which would pay her a little bit less than that, but not too much. So I went away without her.

At Moses Stationery Store was a girl of Japanese extraction by the name of Mickey. Now I can't even remember her last name, but her first name was Mickey 'cause she's remarried. And at that time she was drawing \$100 a month at Moses as a secretary. I offered her \$130 and, oddly enough, she jumped at it. She was one of the fastest typists that I've ever known, and she came on as my secretary and her pay went right up just as fast proportionately as Mutsuyo's had done back there in 1937.

I remember I got my first client before my office was open. I got my client right out in front of the office in an automobile and got a retainer of \$300 before I could even start any typing. I had rented a small cottage less than a block from the courthouse there on Wainuenue Avenue [295] and had made it over into an office. In about six months my business had increased by leaps and bounds, and Mutsuyo came over one day and said would I please take her back. She didn't care what I paid her, please take her back because she was unhappy up there and wanted to be back with me. So I took her back. And I think I paid both of them \$200 a month at that time. And they went right on up because my business increased.

And then John Ushijima, Mutsuyo's brother, came back from Georgetown and I took him in as an associate first, and eventually made him a partner. Then Roy Nakamoto came back from Harvard and I made him an associate because business was just booming all the time. I wound up with six secretaries instead of one or two and now we come to 1961.

I might state now that we never had any children because my wife had had a hysterectomy a couple of years after we were married, so we had no children. But we travelled some to the mainland always, except in 1970. I'll tell that story later. So in 1961 on January 10, Lu's father, Lawrence Harry Powell, died and a few days later I left with Leo Lycurgus, one of the Lycurgus boys, to go to Greece with him because Leo's father, "Uncle George" Lycurgus, had died the previous December and under the treaty with Greece, when an American citizen has property in Greece, in order to make sure that there isn't double taxation, certain things which under Greek law might be taxable upon death are then not taxable in the United States and vice versa. So it's necessary to go to Greece to make sure that the items which the Greeks were going to tax--the Greek lawyers were handling that end of

that--would not overlap. So Leo and I went to Greece. We were gone three months and were there most of the time.

Then when I came back in March, when I got to New York, I left Leo and went down to Washington, D. C. because Hawaii had become a state and when we became a state the United States district judges--one of them was Frank McLaughlin and the other was Jon Wiig. By that time Metzger had died and, incidentally, I gave the eulogy at his funeral here on Oahu. No, Metzger hadn't died then--he died afterwards--he was then in a nursing home and was not aware of too much that was going on.

So I went down to see Senator Long. When we became a state, both of the United States district judges were out of a job. Their appointments as district judges were not Article III. Theirs was simply a term of eight years, whereas when we're a state, the district judges are terms for life. So at twelve noon on August 21, 1959, both Wiig and McLaughlin were out of a job and each wanted to get back into it. Unfortunately for them, we had two Senators; one Hiram Fong, Republican and one Oren E. Long, Democrat. And Hiram Fong was a very strong, aggressive, old-line tough politician. Oren E. Long was an ex-school teacher, ex-school principal, ex-school superintendent, ex-governor and one of the nicest men you'll ever meet. He didn't want anybody to be mad at him.

Frank, because of my relationship with him over in Hilo, had always been a personal friend. And I was for Frank. I knew he had many idiosyncracies like his order that the witness stand meant exactly that. Did I tell you about that? (S nods negatively) Well, Frank had never been a trial lawyer. He had come out of Harvard, went to practice in his home town for six months, and then went down to Washington, D. C. to the Department of Justice because he had good political connections out of Massachusetts. He was a good Irishman and he married a good Irish girl.

And down there they told him after he'd been there a short time, and not in the trial section, they told him to go out to Hawaii and as he told me, "Go out to Hawaii and keep your nose clean and we'll take care of you." So he came out to Hawaii as a bag boy, a bag carrier, for the attorney who was down here to try the Hackfeld case. The Hackfeld case, as you remember, rose out of the first World War when all of the Hackfeld interests, which are now American Factors including Liberty House, they were all Hackfeld. And this attorney came down for that purpose.

And he was here for a short time while they were getting ready to try that case and assisted in that trial and then bingo, he was appointed in 1939 to what was then, Hilo was then the Fourth Circuit Court because we had the Third

Circuit over in Kona and the Fourth Circuit in Hilo, but J. Weasley Thompson, I mean J. Wesley Thompson, finally reached the end of his tether over there in Kona and when his term ended, I think he was there twenty-five years, he was appointed by Wilson. Then they combined the Third and Fourth Circuits into the Third, so that the Third covered the whole island. And that's why I was judge of the Third Circuit Court.

But Frank in 1939 was appointed judge of the Fourth Circuit Court. At that time he was thirty-one years old. He'd never had any real practice as a lawyer. He didn't know the problems of the lawyers trying cases and he went from that to be a United States district judge in 1943. You can see at that time he was thirty-five years old. And here he was on the bench. He was a brilliant man, really smart, but he just couldn't communicate. He didn't understand the problems of the hoi polloi. I remember when he was on the bench in Hilo. I was prosecuting, county attorney, and he on one occasion when a defendant pled guilty, he was a local of Japanese extraction, and McLaughlin gave him one of the most scathing lectures you could ever hear. And I'm standing up beside him because he pled guilty, and when McLaughlin...

END OF TAPE 2/SIDE 1

P: ...finished his harangue, the defendant turned to me and said, "What did he say?" And McLaughlin knew what he was saying to me and McLaughlin's face turned pink, purple and any other color you want. And he said to me, "Mr. Pence, you will please inform the defendant of what I have just now told him." And that happened many times afterwards, but not quite the same way. He simply did not know how to communicate with the locals around here at all. He couldn't.

And at one time when he was over here in Honolulu as the United States district judge, after he'd been on the bench quite a while, he suddenly issued an order that the term "witness stand" meant just what it said and so that witnesses who testified in his court from that time on, unless they were infirm, should testify standing up. Well, God has spoken and so that started every one standing up while they were testifying.

As I heard this story, and I know that it's true, one of his friends back in Washington, D. C. wrote him saying, "I've just received a letter from so-and-so down there in Hawaii saying that you've ordered that all witnesses should stand while testifying. I would expect you now to order that all attorneys should wear wigs and robes, but I'm sure it's all a joke..." and so forth. Well, it wasn't a joke and McLaughlin was wild. He wrote back a very scathing letter and lost a friend because of that. He also had a rule that no one could

come into that courtroom who wasn't fully and properly clothed. All men who came in to sit down and listen to what was going on had to wear a coat and tie and shoes and pants and all. All women had to wear proper dresses and have proper shoes on.

On one occasion, I told you I was his friend, and I came over here and told him I'd like to have lunch with him, so a little before twelve o'clock I went up to his courtroom because he was on the bench. At that time, as the result of the influence of the Army dress during the war, I was wearing a tailor-made matched shirt, long sleeved, and trousers of very nice material with a tie. So I went into the court wearing that. I had never heard of his rule about how people just there as observers had to be fully dressed. Over there you came in from the side, so he didn't happen to see me come in. In a few moments I was tapped on the shoulder and it was the bailiff saying, "I'm sorry sir, but you'll have to leave." I said, "Why?" "You don't have a coat on and it's the rule here that you must have a coat on." So I got up and said a four letter word under my breath, laughing at the same time, and as I went to go out the door I looked back to see if Frank had seen all of this, and he turned at that moment for the first time and he saw me going out the door escorted by the bailiff. So he knew what had happened.

I went right around to his office. I knew his secretary Mrs. Smith and told her, "I've just been kicked out of Frank's courtroom." And here came the bailiff, huffing and puffing and saying, "The judge just told me that rule does not apply to those from the Neighbor Islands." (laughter)

I didn't go back in. I had lunch with Frank. But Frank also had a bad habit of just excoriating attorneys. He'd just give them holy hell for something he thought they hadn't done right or they'd done wrong. Even in the presence of their clients, he was very rough on attorneys. So he wasn't beloved of a lot of attorneys. And it all stemmed from the fact that he simply wasn't able to understand how the world really operates on the lower level. But I was for Frank. He was smart, he was honest to a fault, so I was back there in Washington, D. C. to see what I could do with Oren E. Long to help out.

So Oren E. Long...whereas Hiram Fong had said, "We have one Republic Senator, we have one Democrat Senator and we're going to have one Republican judge or we won't have any judge at all." And that's because under the unwritten law of the Senate, when it comes to district court appointments, if the Senator of a district puts in a blue slip saying the man is-- "I don't want him. He's personally obnoxious to me."--I don't care if it's Frankfurter or Holmes or who it might be, he doesn't go through: he's dead. And so Fong had put that

ukase out. And Fong in December 1960 after the election--after Kennedy had been elected, Fong got Eisenhower to appoint C. Nils Tavares, former attorney general of Hawaii and member of a prestigious firm and so forth--long time local Chinese-Hawaiian-Portuguese--very intelligent--Michigan man--a fine man--got Eisenhower to appoint him to be judge as an interim appointment. That means that when the new president comes in there has to be a new appointment. We saw what happened when Heen--now on the state court of appeals--was appointed by Carter but Reagan pulls his name out--the same type of interim appointment--Heen's name was pulled out, Tavares' wasn't.

So there's only going to be one puka. Fong had said so. There's only one and there's two for it. And I see Long. Now I had known Long from the time he was a school teacher, a principal, on up the line. I campaigned for him when he was running for delegate, I campaigned for him when he was running for Senator and all that. I knew him personally and well. So he greeted me with wide open arms and I told him I was up here because of Frank. "How was Frank coming?" And he said, "Oh, I'm for Frank. There have been thirty-three attorneys there in Honolulu who applied for the appointment, but I've told the Department of Justice that I know them all and they're all fine and able attorneys and anyone of them who's selected by the Department of Justice is perfectly satisfactory to me, but I'm for Frank." I couldn't believe it. He had turned over all of this power, because a Senator's the one who says, he turned it all over to the Department of Justice. He just abdicated, but that's what he had done.

So I came back and I tell Frank the whole story. Frank, he's for you, but you'd better get busy and hit him over the head and tell him to jettison everybody else but you. Do your best because that's the problem. While I was in Washington, I had several political friends, old-timers, because I'd been in politics a long time. Included among my friends was former postmaster general under Roosevelt, Jim Farley, who had been the one... among my personal friends was Jim Farley up in New York, but I had others in Washington, D. C. and I'd talked to them about Frank. So I knew Farley this well.

Remember after he was postmaster general, he quit after Roosevelt's second term and he quit in a big split because both he and Hull pulled out. As Farley told me, he had gone to Roosevelt thinking that it was just going to be two terms and he asked Roosevelt if he was going to run again because if he wasn't, he wanted to go out and get delegates. And Hull also told Roosevelt the same thing. And as Farley said he was assured by Roosevelt, "Go out and get your delegates. Go ahead." So he started out to get, and everything was going fine until all of a sudden he found there was

resistance. Word was coming out of Roosevelt, "Don't commit yourself to Farley." And then he realized that Roosevelt was going to run again and here he had already started the wheels going. And Hull was hit the same way and Farley was so wild at Roosevelt not telling him instantly what he was going to do, he and Farley, who had been with him from the beginning and he couldn't level with him, so that he broke and ultimately became chairman, I think, of the international branch of Coca-Cola Bottling, so he travelled around the world.

Doc Hill had the Coca-Cola agency and the first time that Farley was down Doc threw a big party for him over there in Hilo. This was after the war and I was among those who was invited as being the top Democrat. And something, Farley liked me and I liked Farley, and every time that he was anywhere near Hawaii he had to see me. One time I was out, after he'd been around the world, I was out hunting on Parker Ranch and here comes a cowboy across the ranch looking for me about ten in the morning to tell me that Jim Farley was in town and wanted to see me. I came back, quit hunting, and came back to Hilo and cleaned up. He was over at Doc Hill's house having another party. He left the party and we went into a little office den and after two hours, he didn't go near the party, he was just talking to and with me. So that I say I knew Jim Farley well. He was discussing what he should do, what his problems were in regard to, should he publish all of this book, he just wanted somebody to bounce it off. So anyhow see, I was a big frog in a small pond and I found out that the big frogs in small ponds are the ones that the big frogs in big ponds visit and so that when you go to a big pond, you visit with the big frogs over there.

So it happened that on June 13, 1961, I got a call from Washington, D. C., an attorney friend of mine there, saying, "Penny, your friend McLaughlin has just been notified this morning that he is not going to be appointed to be United States district judge. He's out. There are only three names now being considered by the Department of Justice; John Wiig; Bert Kobayashi, then attorney general of Hawaii; and Martin Pence." And I said, this is all verbatim, these things are etched, "Martin Pence! How in the hell did he get on that train?" And my friend said, "When McLaughlin was out, I put your name on. You'd take it, wouldn't you?" "I couldn't turn it down." So he said, "Now you get busy. You write to Long and Fong and Inouye and everybody that you know to get busy and see what you can do and I'll do all I can for you back here." Well, the fact that he could put my name on meant that he could do something for me back there. And he said, "Wiig has the inside track now." Well, in August, all of a sudden, I was being investigated by the FBI and I knew then who had the inside track.

Because when I wrote to Farley, he said, "Dear Martin, I'm not in the best graces of the Kennedy clan now, but I have some friends that are in Washington who are. I'll see what I can do." And that's the way it went all down the line. And so I received a telephone call from--I don't know now when I was notified that my name had gone down--but I did receive a telephone call from some secretary of the subcommittee of the judiciary saying, "You will be in Washington, D.C. on the twenty-first day of September 1961 for a hearing before the judiciary subcommittee on your nomination and possible approval thereof by the Senate. "Well," I said, "who pays for my trip back there?" "You do." (laughs)

So I'm back there with a whole group of others--Judge Tom MacBride, whom I hadn't met before, from Sacramento was there--because there was a whole group who went in in September--Al Zirpoli, district judge from San Francisco, a classmate of mine at Boalt (Hall), Law School of UC at Berkeley was there--Nils Tavares was there--a chap whom I didn't know, Hubert Will from Chicago--a judge whom I met later was there. So Long takes me down and we're seated in this little hearing room. And Tavares was there. And Fong is on the subcommittee. So Tavares is called up and Fong says a few kind words. Long--when my name comes up and I'm queried just as Tavares had been queried--and Long says a few kind words and that was the hearing.

Hubert Will was there but I didn't know him then. When my name was called in the hearing room, I heard a voice behind me say, "Pence. Martin Pence. He was the attorney in the Buck case." I turned around and here were three people I'd never seen before. And one was a very fine looking elderly man with silvered hair, and really looking quite noble. Along side him were two younger looking men--very alert and well dressed--and I'd never seen them before. And I said, "I wasn't the son of a bitch who represented him at the trial." (laughs) My name had been called, and I heard, and I turned around and said that. And one of the young men said, "We know, we know, we know all about it." So then I go on up and have my hearing and I turn around and go back and they're gone. And I didn't know who they were.

It wasn't until the following March when I was at the school for judges at Monterey--the second school that they had for federal judges--now every year when a new batch of judges comes in they have a school for them--but that was the second time it was tried--educating you on the problems of handling federal cases the best away--and among those there was this chap who came up and introduced himself as Hubert Will and he said, "I was behind you and that was Senator Douglas, and Senator Douglas' administrative assistant and Douglas was looking into the Buck case."

I won't tell the Buck case except that it was about a Marine who was stationed over at Hilo--I mean Waimea--and I met him and he became a personal friend and then he'd stayed in the Marines and he'd been accused, charged and convicted of stealing chevrons from the Camp Pendleton warehouse after the Korean War in the 1950s.

S: Chevrons? Insignia?

P: Yes. And he'd done everything possible to prove that he was not guilty and had appealed and his case went up to the highest military courts and I came in--after his first conviction he wrote me and said that here was the transcript and could I help him with the appeal. And I'd written him and said, "I'll write a brief on appeal for you, but you'll have to get your attorney back there to get an extension of time because I can't do it. I'm too busy and all the rest, but I'll have it on next date." So I had it on next date and I sent it in, but the attorneys were getting out of the military all the time and the attorney that he had by that time never even sent it in and they had to open up the record--the case was fouled up all along from the beginning when his attorney did things that proved his trial attorney was either a venal or a stupid jackass. I never knew which. That's why I cursed him out that way. But time went on and investigations made and they showed that perjured testimony had been given at his trial back there in 1953 or 1954 and he was pardoned by President Johnson and his rank restored, he was retired and given something like \$80,000 in back pay. And Johnson had his family back there in Washington for the ceremony. But that was the Buck case in a nutshell.

So I'm a United States district judge. I had then to shift to Honolulu. Lu and I had built a house in 1955. It cost us a heck of a lot more than that first house and here it was 1961 and we had to give it up. We'd built it especially for us. I hated to leave Hilo. I had twenty-five years--my roots--I could say in all sincerity that there was no one on the Island of any mature age who didn't know me. I was the campaign manager of the Democrat party from 1950 until I left in 1961. Always I was up front making noise for the Democrat party, so that was one of the reasons I was appointed. I had better tickets than either Kobayashi or John Wiig. I had been a judge, which put me over Kobayashi, and I had been an active Democrat, which put me over Wiig. And I was a better judge than Wiig ever thought. Wiig was not the strongest judge in the world. He wasn't nearly as strong a judge as McLaughlin.

It used to be said that when you got off the elevator, if you went to the left and you had a client who had been charged and found guilty of tax fraud of any nature, if you turned to the left, which was McLaughlin's court, you knew your client was going to go to jail; if you turned to the

right, which was Wiig's court, you had better than a fifty percent chance that he'd go on probation. That was the way in which it operated over there.

S: Well, aside from the friendships and everything over there and your home and all, you had to give up hunting over there, too, right?

P: Hunting as much as I had. Because I always had...in those times I had Gordon setters and cocker spaniels, and during the hunting season, Lu at first used to hunt with me, but she didn't have the same feeling. She loved to go in the outdoors. She had a shotgun with a short stock, but she didn't have the same feeling that I did. It wasn't that I wanted to kill, but here is--can I? Can I sweep? Can I be on my target? She used to say, "You kill the birds. You have to clean them and I'll do the cooking." So that's the way it was.

S: To be a hunter you have to have that drive, that spirit.

P: You like walking the outside. You love watching your dog work. It's as much fun, you know, watching your dog trying to get a bird for you or going on point, or flushing a bird if it's a cocker spaniel, going on point if it's a Gordon setter and all the rest. I remember once when we were out with Lu and a bird got up and it flew right over her and she just took the gun and pointed it all the way and, "Lu, why didn't you shoot?" "Well, I was going to, but just about the time I was going to pull the trigger his breast hit the sunlight and it was so beautiful I had to stop and admire it."

I hunted sheep all the time, off and on, the year around. I hunted pheasant during the pheasant season because, I told you about Alfred Carter, a little bit; because of my friendship I had a lot of fine hunting there. Even to this day I love hunting, but unfortunately my coordination, eye, arm, everything else, is not as good as it used to be. So I'm not as good a shot as I used to be. But I go down to Mexico, been going down to Mexico since 1966 because down there you have fantastic shooting and hunting. Shooting, dove flights and duck flights. Hunting, quail. The difference is for the first two you can stand in one spot; for the last one you have to get out and walk, walk, walk, walk, walk over rough, rough, rough, rough country. Over cactus and everything else. I used to love to hunt chukar on Mauna Kea because you have to go up, up, up and walk every foot and the chukar, they're tremendously sporting. You never know where they're going to come up, and you miss, miss, miss. How good are you? That's part of the attraction. I still go down to Mexico. Last December and the previous January. And you're allowed to bring back twenty birds. We go down there for a hunt for three days and

the three of us will eat twenty birds a day. Cook 'em right out on the field. But we only have ten birds in possession each. And we bring out twenty quail. Someone said, "How much do those quail cost you?" And I said, "If I had to think about what each quail cost me, I couldn't afford to go hunting."

S: And you wouldn't enjoy eating it.

P: The gold would get in my teeth. Then when I went back to that school for U. S. district judges, I thought that with my background I was half smart as a judge. But I realized when I was through with that school, I was about half as smart as I thought I was. But I have also found out that there are a heck of a lot of judges, federal judges, who aren't as smart as I am. Hubert Will was an outstanding judge; Al Zirpoli was a smarter judge than I; maybe Irving Hill in Los Angeles was smarter. But there's a lot of them that I haven't named that I'm just as tall as they are and taller than a hell of a lot. And that's not idle conceit.

Because when I was being investigated as to whether I was qualified to be a judge, after my appointment was announced, the American Bar Association always checks out every nominee, and as I heard the story afterwards from both the representative of the American Bar as well as the source I'll tell you in a moment, the American Bar representative in San Francisco called up Garner Anthony and wanted to know what he knew about Pence. Garner knew me, he'd been in court with me. And he said, "Well, I know Pence, but I have someone here in my office who knows him a hell of a lot better." Well, that someone was Eugene H. Beebe. Eugene H. Beebe, during the twenties and thirties and forties and fifties, I always thought was the best trial judge in the whole territory of Hawaii. He was an outstanding trial attorney.

He was a member of the...when he came down here, he was out of the University of Washington. He was with the firm of Thompson, Cathcart, that became Thompson, Cathcart and Beebe. Frank Thompson was a big power in Hawaii and an outstanding trial attorney. Beebe surpassed him as time went on, undoubtedly. And I knew Frank Thompson, but Frank Thompson had a habit of never wanting to pay any bills, even his tax bills. He would file his tax report, but he'd never pay them. He had problems with even paying his help because he spent all of his money on high living. He married one of the Roths. The Roths are a Matson family. He had a great big house and he entertained, and the daughters went to the Sorbonne and travelled extensively. Money was no object and Frank made a heck of a lot of money.

So then Beebe finally couldn't stand not being paid, and so he made a deal and Frank gave him a lease to a house out

in Niu to cover all the money that he owed him. And Gene at that time needed the money because he had a wife who was tubercular and she was in a sanatorium. But Gene left him and went over to Smith and Wild, that became Smith, Wild and Beebe and then later on became Smith, Wild, Beebe and Cades. They were in the old Bishop Trust Company Building there at the ewa makai corner of King and Bishop where the big finance area is now.

So Gene loved to hunt and I knew him when I was with the Home Insurance Company, and he came over to the Big Island and we became very close friends, very close hunting pals-- hunted pheasant together, hunted deer on Molokai together, hunted doves over at Puako on the Big Island. He gave me my first big Gordon setter. He'd come to my house and stay and stuff like that. And Gene Beebe was there.

And among the questions asked Gene Beebe by this ABA man was, "Do you think Pence could try an antitrust case?" And Beebe said, "Well, I think he could try it as well as almost any other judge or attorney here in Hawaii." Now he told the truth. In the fifty years, almost sixty years since we'd been a territory and before we became a state, there'd been only two antitrust cases ever filed in the federal court here. The last one had been some ten or twelve years before and they were both little pip-squeak nothings. Nobody in Hawaii knew anything about trying an antitrust case, so he told the truth.

Well, one of the first cases I had in 1963 was an anti-trust case and it was a big one. And I sat down and I really studied antitrust law. It was Bailey's Bakery versus Love's Bakery, Holsum Bakery and Continental Baking Company which owned Love's. We had attorneys out of San Francisco, attorneys out of Washington, D. C., and we had a fullblown trial and when that trial was over, I knew something about antitrust, believe you me. Because not only had the attorneys helped educate me, I had helped educate me, too.

So in 1964, December, Chief Judge [Richard] Chambers [Richard] of the Circuit called me up and he said, "Martin, ..." Now I'm not going to try to talk like Chief Judge Chambers, because Chief Judge Chambers stammered. He started off like this, "uh, uh, uh, Martin, uh, uh, uh. " He would take so long when he was talking to you casually that you just had to sit there and wait, because what came out was really pure meat, lean meat. When he wanted to talk fast, he could, but when he didn't, he didn't. One time he called me up and said, "Martin, uh, uh, will you, uh, call me back?" He said, "I think, uh, I've spent so much money, uh, on my telephone calls, uh, recently, that I don't want any more bills on it." (laughs)

But he called me up and said, "Martin, (I'll leave out all the uhs and ahs) there's been about a dozen cases, antitrust cases, filed up and down the Pacific coast in the steel and concrete pipe west of the Rockies antitrust litigation." And he said, "They're going to be filed and have been filed in a lot of the different districts and in order that you will handle them all--I want you to handle them all--I'm going to designate you to sit in every one of the districts where any of those antitrust cases are filed, so that wherever they go they'll look up and see the same judge who knows all about what's going on in every phase of the particular antitrust case." He said, "You're familiar with the antitrust law and I want you to handle it. There's about a dozen--maybe there'll be a half a dozen more filed. And so I want you to take it over."

At that time Hawaii had two judges and we were not swamped with work. In the beginning I think we were about a judge and a half court without overworking. Because I know that in 1962 and 1963, Nils Tavares and I served outside of Hawaii more than any other judges in the whole federal system. We helped other courts and so I knew that I would have the time to do it. So I took it on. Well, those dozen cases grew into 400 and I handled them all. We didn't have the system that they have now, by virtue of a statute passed not long after that, whereby the panel on multi-district litigation could assign all the cases of a certain...if they have a cohesive nexus to one judge. But Chambers achieved the same result. Since they were all in this circuit, he could assign me to all of them.

S: Well, it makes good sense to do it that way.

P: It worked. So I was handling them all. And I handled them for seven years. I usually travelled up to the mainland at least a dozen times a year. Sometimes for overnight, sometimes for one week, two weeks, six weeks depending on what had to be done. And sometimes Lu went with me and sometimes she didn't. So it was because of those cases that I gained fame in two ways.

I'll tell the greatest fame first. It was within eleven days until the statute of limitations would apply to all of these concrete and steel pipe antitrust cases. Price fixing between and an area of business fixing between steel and concrete; price fixing between concrete companies, big companies, Ameron here was in it, American Pipe, United Martin Marietta. Oh, there were fifteen or so defendants including Kaiser Steel, U. S. Steel, and all the rest. And suits from Washington, Seattle, Portland, San Francisco, Fresno, Los Angeles, right down the line to Phoenix, San Diego. You name it. Wherever they occurred, I had them all.

So eleven days before the statute of limitations, after they'd been going for seven years, some had been tried, a lot had been settled, up in the millions, the state of Utah filed a suit against American Pipe and some of the others, and they filed it as class action. And because I knew more about that particular antitrust litigation than anyone else in the United States, a Utah judge asked me if I would take it over. It was tied in. Well, a class action... the judge has the right to determine whether he will allow it as a class action whereby when one files on behalf of the whole class and whatever comes out of here, the whole class is bound by. Those who don't, opt out. And so if the judge doesn't certify it as a "class action," why it isn't a class action.

So when I had the first hearing, it was about six months after it had been filed, as to whether it would be a class action. I had handled these 400 where they joined and I knew that they didn't fit into the pattern of class action. There couldn't be any common fund come out of it. Each one had, usually, different defendants, each one had their own particular areas of loss, and so when I sat down, I refused to certify it as a class and held that it was a case in which there should be joinder, so everyone has to fight their own battles and since the statute of limitations had now passed, I dismissed it.

There was an appeal to the United States Supreme Court and there I made my claim to fame. Because my ruling was brand new--it was an issue that had never come up before--this was why the Supreme Court took it. What was the effect of a class action? Did it stay the running of the statute of limitations when it was refused? What was it? It never had been decided. I held that it didn't stay anything, that you took your chances. If someone filed and said it was a class, that you had no right to rely on that. You didn't know if it was going to be a class or not. That was my logic, but there was more to it.

So the Supreme Court in its opinion reversed me, but in reversing they used my name as district judge right in the opinion nine times. Now you can read--in these books over here--you can read and in ninety-nine percent you'll never see the name of the trial judge mentioned. Now don't ask me how it came about, but there I am imperishably in the Supreme Court reports under the case of Utah versus American. And what they held was--American Concrete Pipe and Construction Company--what they held was that "no," the statute of limitations was running--it was stayed--pending the determination of whether or not you were going to have class action. And that then you had from that point, when that ruling was final, just the exact number of days--in this case eleven days--you had eleven days. The statute was stayed, so that it was just as if on that date you still had eleven days to come in and join.

Utah during those eleven days...the Utah attorney general scrambled all over the state and found eight. That was his class action when the chips were down. So ultimately I was back in Utah and I saw to it that it was settled, the whole thing for \$75,000. But it made me famous in the Supreme Court annals. That was the one that made me famous.

Now the other was that I made the book known as The Benchwarmers. The Benchwarmers [Joseph C. Goulden] is a volume that was put out back in about 1971 or 1972 about federal judges who were benchwarmers. They didn't really work very hard. They travelled all they could. They tried to get as much out of it as possible. Well, it happened that the Senate subcommission was investigating the travelling of federal judges, all junkets, and one of the most travelled federal judges during the period 1965 to 1970 was Pence. So they had Chambers back there in Washington going over the judges in the Ninth Circuit, those travelling and there was a lot of travel because Chambers believed in bringing them down from everywhere, from Montana and Idaho, Washington, Arizona, Nevada, to help with the Court of Appeals because the Court of Appeals didn't have but nine judges and they were over worked.

So that they used them...two Court of Appeals judges and one district judge equals a Court of Appeals panel. So that meant they got one-third, they got three more judges right off the bat by using the district judges, so they could get one-third more work turned out. But nevertheless it was a heck of a lot of money to spend on travelling. Because you know the distance between Montana and San Francisco or Los Angeles is far different from the distance between Boston and Vermont or Maine. So he was being queried, "What about Pence?" So he told them what I had been doing. "Well, where is Pence now?" "He's in Australia." That was the answer, "He's in Australia." And I was. So I made The Benchwarmers just on that response.

Well, now the facts behind it were entirely different. Because I had this trial scheduled between a manufacturer of concrete pipe, a competitor who had lost money because they used all of their own agreements among themselves and he sued the whole group. And it was scheduled for trial in Phoenix and I was there for trial and it was going to last six weeks and so, the day before it was to start, there were a whole group of motions which would settle a lot of the issues. So on that day I heard all of the motions, but I didn't rule on any of them, deliberately, because the ruling was going to change the whole case, what the case was worth to the various parties one way or another and they both knew it. So instead, at the close at four o'clock I called in the lead counsel for the defendants and said, "You know that this case

ought to be settled. You know that you're going to have liability and ..."

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S: I think you were in Phoenix at that point.

P: And I said to the lead counsel, "You know you're going to be held liable for something, so what do you think the case is worth to the plaintiff?" Now I could talk to him this way because he had been before me on a multitude of other of these same pipe cases and the relationship with an attorney of this caliber is such that he knows that you want him to level with you. So he gave me a figure. He said, "Judge, I think it ought to settle for around \$600,000." And I said, "Would you be willing to try to get your defendants to up put that amount of money?" "Yeah, yeah, I believe I would."

So then separately I asked the counsel for the plaintiff if he was interested in settlement, and in the course of discussion, without saying that was the figure which had been indicated by the defense counsel, I said, "I think that you might be able to get around \$600,000 in settlement. This is not guaranteed, but it certainly would be a good starting point. Are you interested?" "Well," he said, "the directors of this plaintiff company are meeting tonight and I'll take it up with them." The next morning he came back and he said, "They're willing to settle for \$600,000."

So I'm back again with the defendants and do you know, all day long, those fifteen--I think there were at least that many defendants there--their attorneys--were calling back to their clients, home offices and the like, trying to get authorization to settle the case. But the big problem was--who was going to pay how much? Each was afraid that some other of the defendants would be paying less than they were. When we reached--about three o'clock in the afternoon--we were about \$10,000 short and not a single defendant would budge.

Discussing it then with the two lead counsels, the lead counsel for all the defendants and the plaintiff's attorney, I told them the situation. The lead counsel said, "Damn those guys. I've pled with them all and I'm going to be the one who has to try this case. I'm going to have to do all the work on it. You know, it's worth \$5,000 to me not to try the case." And the plaintiff's counsel says, "It's worth \$5,000 to me not to try the case, so we'll each knock it off of our fees." And the case was settled. It's a true story.

So all of a sudden, with the case settled, I had six weeks with nothing on my calendar. I said to Lu, who was there in Phoenix with me, "Let's take a vacation." I hadn't taken a vacation in five years; I'd been handling these cases; I hadn't had time, but here was an absolute blank for six weeks that I'd set aside for the trial. She said, this was April 1, and she said, "Let's go to Boston." I said, "Oh no, oh no. Boston, it may rain tomorrow, snow tomorrow, hail tomorrow, burn up tomorrow. No, not at this time of the year, not in Boston." So she said, "Well, let's go to Australia." So off we went to Australia.

Well, it happened just about that time that the Senate committee was investigating the money spent by federal judges in travelling. The Ninth Circuit, the federal judges spent more than any other circuit for the basic reason that the Ninth Circuit needed more judges on the court of appeals and, all the time, Judge Chambers would use district judges to sit on the Court of Appeals because two appellate judges and one district judge equals an appellate court.

S: We had covered that--how you made The Benchwarmers because of all the travelling, and then when they wanted to know where you were, you were in Australia.

P: That's it, that's how I made The Benchwarmers.

In looking back over some of the things that I haven't covered that I think might be of some interest, I have to jump clear back to the Massie case, Thalia Massie's claim that she was raped and the murder trial which ensued thereafter. [1931-32] First, as to Massie's claim that she was raped. At that time I had a close friend, a big Hawaiian sergeant on the police force, and he was among those who had been called out that night, so I asked him as a friend, "Was she or was she not raped?" He said, "Of course, we'll never know, but I don't think she was or if she was raped, I don't think it was by those boys (the defendants). I was up there at the house as part of the investigation, at the Massie home, right after the call came in and do you know, up the sidewalk and insisting on coming into the house was a Navy officer, drunk as a skunk, and he was insisting he had to come in and he had to see Thalia. And it wasn't on account of her claim that she'd been raped that he insisted he had to see her. Nothing would do but that he had to see her. We had to literally pack him up and shove him out to keep him from coming on into the house." That's that aspect of it, that's all I know about it.

The other aspect of it is, I attended the trial on two occasions when Mrs. Fortescue [Thalia Massie's mother, Mrs. Grace Granville Fortescue] and all the rest were being charged with murder and Darrow [Clarence Darrow 1857-1938] had been hired by Mrs. Fortescue to represent them. Clarence

Darrow in the teens and the twenties was famous, had been made famous particularly on the West Coast, but throughout the nation as the result of his monkey trial [Scopes evolution case 1925] and everything else, and Darrow, however, was no longer a young man. When he came to Hawaii, I was horribly disappointed. He was a worn-out old man.

Montgomery Winn was the one who really carried the load, a local lawyer, a very able attorney. Darrow, he couldn't have won any case, very frankly, the way in which he appeared. He would get up, his questions were not incisive, he was fumbling, a few questions, then he would turn it over to Winn, who really did his best and did a very good job. That's all that I want to tell about Darrow at that time and the Massie case. He was but a shadow of his former self.

I have to come down to my own personal life. My wife Lu, who was smarter than I, smoked cigarettes. She was a heavy smoker. In 1969 all of a sudden she went to the dentist and found that she had a cancerous growth under the tongue. It was treated in the best way that it could be, first they used X-ray, then they used the cobalt and everything else. She was horribly burned; her teeth had to be all extracted because the bone structure was damaged by all the treatment of that time; and her hair fell out because of the effect on the thyroid and all the rest. It came back.

She was operated on, too, and seemed to recover, but still not, and then in 1973, late 1972 it came back again, and she found, the doctor found, that she was a nicotine addict as so many become. The doctors pled with her; I pled with her, "Please quit smoking." And she simply said, "Penny, I can't, I can't." So on February 4, 1974, in Kuakini Hospital she died, and cigarettes were what killed her. There's no ifs, ands or buts about that.

S: Had you ever smoked?

P: I did. I smoked until 1933 when Dr. Forest J. Pinkerton said, (I was having trouble with my throat) "Quit smoking. That's what's causing you all that hoarseness and irritation and so forth. Quit smoking." And so I quit and never smoked again. I had not yet become an addict, that's what it amounted to.

So then it was a year and a half after that that I married my present wife. Eleanor Talcott Fisher was her maiden name. Her brother Gerald Fisher had been the president of the Bishop Trust Company here. Her mother had been a Wilcox, a niece of George Wilcox, famous of Kauai.

Her mother and her Grandfather Wilcox had lived in California. She had gone to the University of California and had married a Fisher who was a University of California

graduate. He went into the YMCA work, and was sent out to Japan and was there for thirteen or fourteen years setting up the YMCA in Japan for the Christians there. That was Galen Fisher, who spoke Japanese fluently, and my wife Eleanor was born in Tokyo and was there until she was six years old when the family came back to the United States. Then he left the YMCA to work for the Rockefeller Foundation and worked for them until he retired, a very close friend of whichever Rockefeller it was then.

They lived back in Pleasantville, New York, so that as a result of living back there she went to Smith. She's a Smith graduate. Then she went into Yale nursing school and graduated from Yale nursing school, and while at that school met Robert Johnston, who came out to Hawaii just because he had an offer. They were married back there and so that's how she happened to be back out here. Her brother had come out here after going to Princeton and had gone into the sugar, then left sugar and went into finance.

So Dr. Robert Johnston and she had adopted four children, three girls and a boy, over the years. About 1968 or 1969, as happens to some men, he decided that he wanted someone who was younger, more vibrant, so he went off his way. So they divorced and she had been divorced some five or six years before I ever met her. I knew who she was because she lived for a period of some ten years up the same Maunawili Road I lived on with Lu over there. Lu knew her because she had been on some committees with Lu, but I'd never met her. But afterwards, I met her and I changed her name from Johnston to Pence.

And we have, I think I told you, the "lunaversaries."

S: No, you didn't tell me about that.

P: Well, we were married on April 12, 1975, not quite a year and a half after Lu died. On the twelfth of every month we have together a champagne breakfast, just together there at home. And so that we've now had 132 lunaversaries. lunaversaries. I've been doubly blessed, thirty-five great years with Lu and now eleven great years with Eleanor. Just absolutely wonderful years. And her children all are all grown up now. One of them, the son, is now one of the top executives, vice-president of Amax Corporation and moved last year from Australia where he had been for twenty years to Greenwich, Connecticut. But the children, all four of the adult children, get along wonderfully with me and vice versa. So much for my personal life. I'm just simply doubly blessed.

S: I would say so.

P: Now going back over cases that I've handled which I think are items of some little importance, we come back to Hawaii and I show you here what happened in 1967, January 26, 27 and 28. There was held here in Hawaii a citizens conference on the administration of justice. It was really under the aegis of Tom Clark [United States Attorney General under President Truman and later justice of the U. S. Supreme Court] who came down here to bring the citizens into the question, the problem, of how can judges be best selected. And it was called, as you can see, William Richardson, Justice of the Supreme Court on March 1, 1967 wrote to me that he was "so pleased with the recent citizens' conference...Governor Burns and I...your invaluable help, et cetera." And here is the consensus statement.

It was held at the Ilikai Hotel with a cross section of judges, attorneys and lay people of every type. They were all there. Politicians, preachers, businessmen, you name it, and you can see the names: Gilbert Root was then of the old Cooke Trust Company and Colin Cameron of Maui Pineapple and Mary George, now a state senator, George Chaplin of the Advertiser and Adam A. Smyser of the Star-Bulletin and others here that I don't know. All top citizens of Hawaii. And they came out with a consensus statement and they held that the judges should be appointed by the governor. All right, but that there should be a committee set up in order to screen those who wish to be judges and the committee would then send names up to the governor who would make the appointment from those on the list.

And it held right in there that the selection of judges should be based on merit and removed as far as possible from the influence of partisan politics. This, by commissions modeled after that, provides for both lawyers and laymen to seek and review available and qualified prospective appointees, and so the governor was going to appoint a committee to follow out the consensus statement and this was called by the governor. You can see from what I have right here, these papers, that was the Governor and Richardson's idea. And the committee was duly appointed, and I happened to know Gil Root, who was a personal friend of mine, was on the committee and he told me at that time there was a vacancy in the judges on the state side and the committee got together and sent out word and they came back and they sent six names up to Burns to fill that vacancy. The man he appointed was not on the list of six.

Well, there was another vacancy, so again they were there for that purpose. They'd been appointed for that purpose. So they sent him up six names. The one he appointed was not among the six. So the committee realized that Burns didn't give a damn about the consensus statement,

he didn't give a damn about who the committee approved, he didn't give a damn about the merit system. He had just gone through the picture of it. So they met and unanimously decided they were through of attempting to do any work.

It was that which caused me to say, in another interview some time ago, that the Burns' administration had done more to bring down the respect for the state judiciary in the state of Hawaii than any other governor in the prior history of the state, because the record showed that he appointed as judges cronies and, most of all, politicians, those there in the Senate or House whom he wanted to reward or whom he wanted to remove, one way or the other. I'll give you just one example.

S: You mean kicking them upstairs?

P: He took them out of the Legislature and put them on the bench. And for one example, over on the Big Island, one year there there were four incumbents, when the Big Island was entitled to four Senators and then came the great reapportionment cases. All of a sudden the whole state had to be reapportioned to get a proportionate representation based upon voting. That was something that under the old constitution was not there, because under the old constitution each of the outer Islands was given so many Senators regardless of the population. The result was that there were more from the Neighbor Islands than there were from Oahu, so that the Neighbor Islands really ran the Senate. That was changed by the cases involving reapportionment and I was in on the first go-round of that, too.

But it meant that the Big Island, when they had the reapportionment, only had three, but here were four incumbents and the Democrats were very powerful. Doc Hill over there, who was a Republican, didn't want to have to run against three Democrats for just three spaces with four candidates and all of them were incumbents. So Doc goes to Burns and makes a deal that Doc will kokua, help out, anything that Burns wants to do if he, Burns, will appoint Abe [Kazushisha Abe] on the bench. So Abe went on the Supreme Court purely as a political deal. Now that was typical.

Nelson Doi. Nelson Doi was a Democrat, but Nelson Doi was a maverick Democrat and he was very vocal. So to get him out of the Senate, he goes on the circuit court on the Big Island. Now that was the way Burns played it. He appointed one good man to the Supreme Court, a Republican, but that was because he played golf with the guy. He was a very good man. It was just by accident that he was a good man. Now that was the way Burns operated and I said all this in public and it was printed without going into the names the way I have now.

So young John Burns wrote me protesting that his father always tried to pick the best. He wrote me a very nice letter, but he protested. And I wrote him a very nice letter because I think that John Burns, the son, has proved himself to be a very fine judge on the state appellate court, and all of those who work with him and come under him praise him very highly. But I told him of this conference and how his father had thrown it overboard and that I had seen the results. That takes care of my recollection of the Burns' administration and its judicial appointment.

I have here a letter dated June 6, 1983 from a United States district court judge down in New Orleans by the name of Judge Lansing L. Mitchell. Now I know Judge Mitchell well because I sat on the bench down there for a month about 1980 and I'd written to him that I expected to go and sit on the bench in Chattanooga in 1983 and he's writing to me, "I know that while I'm dictating, you expected to be in Chattanooga for the month of May, 1983. I telephoned both Chattanooga and Knoxville and failed to locate you. Then I learned from Chief Judge Taylor's secretary that the Chief Justice had refused to approve your travelling such a long distance."

Now the only reason that I went to New Orleans for that one month back there in 1980 was because one judge had died suddenly of a heart attack and another judge was having a hysterectomy, so they were short two judges on the bench there. They needed--the national--the national committee from the judicial conference on intercourt movement of judges--when some court needs help, intercourt demands that you must get the approval not only of your own chief judge of your circuit to go out, but you must get the approval of the chief judge of the other circuit to come in, as well as the approval of the chief judges of the respective courts involved, and then the chief justice has to approve your travelling.

So I saw the letter from the chairman of the committee on intercourt assignments to the chief justice saying, "We have sent out word that they need help in New Orleans, but only two judges have responded. Judge Curtis of Los Angeles and Judge Pence said they're willing to serve, so that I feel we will have to approve Judge Pence going." Now there was no problem with Judge Curtis going, but we feel we'll have to approve Judge Pence going. And I was approved by the chief judge because there were only two and they needed two and I was one of the two. Otherwise, it would have never been approved. Oh, this goes back to ...

Now I never knew Burger [Warren Earl Burger] before he became the Chief Justice, but the old Arabs have a saying, "To each man, his own fleas are as gazelles" and sometime, I forget, about 1972, yes, it was 1972 because plans for this

building had already been completed and they'd started the foundation. And you can see that this particular building and the other building, this one was built around four courtrooms. Each of them happened to be forty by sixty and that's the standard size courtroom in the federal courts, all the new ones that were built before 1972. So we designed these to be the same size, forty by sixty.

So Burger all of a sudden went to the judicial conference and told them that he was appointing a committee to study the size and shape of courtrooms for United States courts. The committee was composed of Devitt [Edward J. Devitt] who was very, very widely acclaimed as being an outstanding judge out of Minnesota, but who is a cousin brother of the Chief and the Chief puts him on every committee and they're very close together. It also consisted of a former law clerk of Burger's, an old-time judicial friend of Burger's, a former law partner of Burger's, an attorney who was really like Burger's lobbyist when Burger was trying to become Chief Justice, and a former member of the GSA who was an attorney and who left the GSA and was trying to become a federal judge on a court of claims and who when Burger's son--I think this was about 1964--needed a job, this same man had gotten Burger's son a job in the GSA. Burger's son had been making about \$5,000 a year selling real estate back then and all of a sudden he was given a \$16,000 a year job at GSA in charge of some of their land problems, et cetera. Then Burger helped him, oddly enough, to come on the court of claims. That was the committee.

S: In other words, a highly impartial group.

P: A very impartial committee. And they come up with a design for a courtroom that was going to be twenty-eight by forty with a ten-foot ceiling and, in order that the attorneys, when they stood up, would not look down at the judge, there was going to be a two-foot deep pit in front of the bench. And I'm giving you a verbatim now of what I heard Burger say on an occasion that I'll tell you about.

"It came to me that Congress was concerned about the high cost of federal courthouses and, in particular, courtrooms. So I invited the chairman of the subcommittee on Finance of Public Buildings and Grounds of the House, the chairman and also the minority leader of that particular subcommittee, to lunch and I told them that I was aware that Congress was concerned about the high cost of the public courts and courtrooms, and they assured me that Congress was concerned. And so I went through the AIA and the ABA and all of the other designs for courtrooms, and finally the GSA kindly gave me some space at Fort McHenry and gave me the plywood and I mocked up a courtroom out there."

And then he goes on. The committee went out, came back

and, oddly enough, this was the courtroom that they come up with, the same one that he'd mocked up. He'd gotten that size out of one of the courts in the new Old Bailey. Unfortunately, he'd overlooked the fact that in the new Old Bailey, in that particular one, they had the audience area up above, like a balcony, and he overlooked the fact that the other courtrooms in the new Old Bailey are not that size, they're much larger. And that the reason that that one had a pit was because it was joined to the old Old Bailey and, in order to bring the pipes over and with all of the conduits in the old Old Bailey, they had to make that joint to get around and they made a pit in front.

And that was the reason that particular courtroom looked so odd to everyone except the Chief, because it was small, compact, and you see, by having a ten-foot ceiling it would fit into the thirteen-foot standard height for a story, so that it wouldn't be as expensive as it now is to take two stories to make a sixteen or eighteen-foot courtroom. It would be much cheaper. If you could see pictures of it, you'd see how the jury is sitting within three feet of the counsel table, so the attorneys if they wanted to say anything loud enough, the jury would hear it. And anything that they didn't want the jury to hear, they'd have to be very careful that they made it soft, et cetera.

So this impartial committee reported back to the judicial conference about four in the afternoon. That's when Burger put it on the program, because he's ex officio chairman of the judicial conference of the United States and that's made up of the chief judges of the circuits and one selected district judge from each circuit, so there's two from each circuit. And at four in the afternoon back in Washington everybody's thinking about going home on the second day, and that's as I was informed by a very reliable informant who goes back there for years, every time that's the standard way to run something through.

Well, Dick Chambers is my informant and Dick Chambers was back there and he knows how the Chief operates, so the Chief...Devitt had filed a report and Chambers said to Devitt, "Is this meant to be retroactive?" Because this was 1971 or 1972, right in there. And Devitt said, "No, no, I don't think so, but I'll check with the committee." So he got on the phone and called the members of the committee and they said, "No, no." They hadn't planned anything retroactive because there were at least nine courthouses either in the process of being built or with the plans finalized. Ours was already finalized and the ground broken. Devitt came back and told Chambers, "No, but I have to speak to the Chief." Now this is the committee report. So he went to the Chief and came back and told Chambers, "No, no, the Chief says it's retroactive."

So there were nine of us, and that committee which he had appointed was called the "ad hoc" committee on courtrooms and courthouses. So nine of us from Miami, North Carolina, San Diego, New Orleans, Cleveland, out here, Philadelphia, Baltimore, there were nine of us anyhow. And we got together because we found out who all was affected by this retroactive deal because we got word. We started inquiring around. We knew how things worked, so we had Judge Heebe [Frederick J. R. Heebe], Judge Heebe from New Orleans, write to the Chief and say that we wanted to sit down with the Chief. We wanted to see him and talk to him. And Heebe got back one of these, "Why, how dare you write such a letter. You know that this is an act of the judicial conference and the judicial conference adopted...had ordered the committee and you shouldn't come to me. You should go to the committee." Well, it was just, "How dare you bypass the procedure?"

So we set up, got together, by that time we were calling ourselves the "non hoc nine" and so we set up a meeting with the committee in the Dolley Madison House in Washington, D. C. So we went back there; the nine of us met the night before, who was going to speak first, we outlined it. And we went there at nine twenty-five because we were going to on at nine-thirty and we're all there and the committee's all there and at nine twenty-eight who comes in but Chief Justice Burger. And he nods to all of us, and goes over and whispers to Devitt and in a few moments Devitt says, "Will you gentlemen please step into the next room." And the doors close while the Chief Justice talks to the committee.

And so we were there about thirty minutes and then we were called out and the Chief Justice addressed us, and he started off just like I told you, his verbatim words, because I was taking them down in my long shorthand or my short longhand and it started out, "I became aware that Congress was concerned...." and what he had done et cetera. Then he went on and told us that we had to cooperate da da da da da. But it was all up to the committee et cetera. "I know," he said, "that you have questions, but unfortunately..." He talked for forty-five minutes. "But unfortunately I don't have time. I have another commitment." And boom, he was gone. So we made our presentation and nothing happened.

He overlooked one fact. Then, particularly, and even now, when you scratch a federal judge's skin, political blood flows out. He'd forgotten that each and every one of us had close political ties with our men and women back in Washington, D. C. So what did I do? I write to Sparky Matsunaga and say, "Isn't this terrible?" And Biggs wrote to Boggs. He's a cousin brother of his. And we all did it. And the first thing you know there's going to be a hearing back, by the committee on Public Buildings and Grounds, not the finance subcommittee. So Spark calls me up and says, "Hey, do you want to come back and testify? We can't pay

your way, but do you want to come back?" And I said, "I sure as hell do."

So five of us went back to this meeting, called on the matter of courtrooms, that we had instigated. I remember that Spark meets me and he takes me over personally, and here's this great big gigantic beautiful high-ceilinged, oh, committee room, with tiers for all.

S: It wasn't twenty-eight by forty. (laughs)

P: It was like fifty by a hundred and with tiers for all of the members of the committee, so that each one can see everything that's going on, and here we are down below in the pit, et cetera. And Spark takes me up and introduces me to the chairman who happened to be from Illinois, and as the chairman shakes my hand he says, "I can tell you that any friend of Sparky's can get damn near anything he wants out of this committee." Now that was my introduction to the chairman.

So we five testified and I was just as explicit on the record there as I was to you as to who was on that committee and how it was all rigged and how Burger had sluffed us off and how it was his whole damned idea and look what it would mean, all of these terrific costs. The others testified, but I was the loudest there, I must say. The committee then continued the hearing for another week and said that they definitely wanted a response from the GSA head and probably would think whether they would have Burger himself there to testify et cetera. And, oddly enough, after the next meeting, we were allowed to go ahead and build these courtrooms right out here, just as there are here.

But I sent my bill in for \$419 for my trip back there. I had flown up to Washington, stayed overnight, testified and came back the next day. And back comes from the administrative office, from the director of the administrative office, and the director of the administrative office of the court is appointed by the Chief Justice, so there was a very close working relationship. He told me that they wouldn't pay it because in March of that year Burger had sent out, himself, an order that no judge should go back to Washington and testify about any matter contrary to the wishes of the conference, contrary to what the directors of the conference or, this was before the hearing, without the approval of the director. You couldn't go back and testify and get your bill paid, go back there and testify without the prior approval of the director. So they weren't going to pay it.

So I wrote a letter to the director and sent a copy to every chief judge across the nation of every court, in which I said succinctly that Burger didn't have any authority to

make that order, only the judicial conference can make it, and that this was definitely very important to this court, very important to the whole judiciary, and if they didn't pay me because his order was a nullity, didn't mean anything, and if they didn't pay me, I would take one of three courses: I might bring a suit in the District of Columbia against the director, or I might bring a suit in the court of claims against the director, or I might try to get a special bill passed in Congress to reimburse me. But that's what I was going to do if they didn't kick through. So I got a letter back from the director saying that I'm all wrong, I'm all wrong, but this matter is so small here's the check. Well, from that time on, guess how Burger felt about me.

END OF TAPE 3/SIDE 1

P: I've had some really interesting legal cases in which some new law has been made and a lot of problems involved. One of them was about 1968, I think, when IT & T, International Telephone and Telegraph, sued GT & E here in Hawaii for antitrust violation because GT & E had been acquiring telephone companies, the independent telephone companies, and every time GT & E acquired a telephone company, then the independent producers of telecommunications equipment were frozen out of the market. At that time AT & T had about ninety percent, I would say, of the total market in telecommunications equipment and they had their own Western Electric.

Well, GT & E had their own Automatic Electric. They produced their own equipment, too, just like AT & T did and GT & E would immediately cease buying that which was made by other equipment makers including IT & T. IT & T had been a big supplier to the old Hawaiian Tel. When GT & E took over and they'd taken over several within the past five or six years before that, the independents, immediately all business ceased.

So because of my experience in the pipe cases and the knowledge of a lot of attorneys that I knew a little bit about antitrust, all of a sudden here's this suit started down here when GT & E took over Hawaiian Telephone. So here were these two giants fighting and they fought before me. And after prolonged hearings and so forth, five years later, because the charge was attempted monopoly in the telecommunications equipment market, I found GT & E guilty and I ordered divestiture of all of its acquisitions that it had made since 1950, all of the independents, and also to separate the operating companies from the manufacturing, Automatic Electric.

As it said here [Business Week December 16, 1972] "If Pence's judgment stands, GT & E will have to sell off about 3.7 billion dollars worth of its assets or about forty

percent of its current operations and so forth." It went up on appeal. The Ninth Circuit reversed me because I had ruled that the order of divestiture of property could be done because the plaintiffs in these cases are acting as private attorney generals, they're bringing suits that really the attorney generals should bring in order to stop monopolies. It went back to the time that in the early 1950s under Truman, the antitrust division had brought the same action against AT & T. But in 1955, when Eisenhower was in, all of a sudden a consent judgment was entered into leaving American Tel and Tel still with Western Electric and buying all of its equipment from Western Electric. So they (the Court of Appeals) held that only the government could ask for divestiture.

But before it went up on appeal to the Supreme Court, GT & E's attorneys settled and they agreed that they would buy a certain percentage of their equipment and allow testing of the equipment of the telecommunication independents like IT & T. They would allow all of them to come on in and test and they would buy a certain percentage, and for ten years they would report to this court on the percentages of their purchases from the independent companies, et cetera, et cetera.

And I asked Ted Brophy, who later became president of GT & E, who was also the lead counsel, I said, "Even though I was reversed, why did you settle and give them basically what they wanted?" He said, "Judge, I have to tell you. We don't think that that ruling's going to stand up. We don't want to take the chance." (laughs)

Well, you see what happened later on down the line when AT & T was broken up, but I did advance on this one. So as you can see from some of the publicity, this one comes from Business Week, December 16, 1972, in which they talk of me as being a "feisty" judge. Well, I never knew whether that was a good name or not. A feist is a dog. (laughs) Be that as it may.

S: Well, this may not be the place, you may want to get back to this later, but I did want to get some comment from you on the recent publicity that was given to the Ninth Circuit Court of Appeals.

P: Oh, why did you touch me deeply?

S: I just felt it was something I had to do. (laughs)

P: Well, you see, during the sixties when I was on the Court of Appeals very often, there were nine judges--happened to be they were all men at that time--and I knew them intimately and well. I'd go to their house and they'd come to mine because I was with them so much. They'd come down

here a lot or I'd be with them in hotels in San Francisco or Los Angeles, depending on where they lived.

And their belief was that you must never expect absolute perfection out of any trial, but you should look at it from the standpoint, abstractly, has this really been just, the result just? And that cases should be terminated, you shouldn't have interminable litigation, so that if there was any way in which they could affirm, in all integrity and honesty, based upon the law, because the law is not an absolute black, an absolute white. The law, most of it, is gray, gray, gray and so that you can find any color in any shade that you want.

But their object was, is it substantially fair and just and is it best that this be terminated? And if it didn't violate some known principle of law directly, it stood. The percentage of reversals was low. Along came then an increase in judges and the court jumped all of a sudden from thirteen to twenty-three and that was during Carter's administration. And Carter appointed commissions to give names to the court. Unfortunately, Carter was imbued with the idea that you should have more minorities on the courts, so the commissions were all composed of minorities and the result was that some brilliant people who were district judges who were perfectly willing to go up and who wanted to go on the Court of Appeals, they were thrown out, not even reported to Carter by the commissions because they had made a speech one time which some minority group thought was slandering or some way gave the wrong inference that they said so-and-so regarding that minority idea. They were out, no matter how good, bad or worse, they were out.

And they put in a whole group, very frankly of the erudite, those who had very little, if any, experience in the practice of law insofar as going out and trying cases and seeing what happens when you're on the bench, very few. And they have over there a group, you can tag them liberals or anything you want, but most of them were freaks and mavericks in the sense that they were not solid practitioners of the law and they never had been. And you have a lot of them on the Court of Appeals of the Ninth Circuit right now, and that's one of the reasons why.

This is an apocryphal story, but I believe it's true from something else that I've heard. A case goes up on appeal and the three judges look at it. The decision of the trial judge, strictly under the law, was a matter of his discretion and one of the three said, "We're going to have to reverse," and the other two said, "Well, we don't see how we can because this is a matter of discretion." And the third one said, "Well, I know, but that isn't the way I would have decided it."

I was so concerned with the number of reversals that every judge, district judge in the circuit, has been getting in the last five years with this group on there that in 1984 I had one of my staff check out all of the opinions of the Ninth Circuit during 1983. See, as they now do it, they have their published and their unpublished opinions. The unpublished opinions are those in which they feel that the rule of law is already so well settled or the grounds of appeal so frivolous, that there's no real merit in the appeal, so they have nothing really to report except that it's been affirmed.

Then the other group are the published where they feel that they're worthy of publication because they've reversed and they want to tell the world why this is wrong et cetera. Anymore, because of malpractice cases and all the rest and because of the amount of money the government spends to make sure that every criminal defendant is defended properly and you have to advise every criminal defendant that he has a right to appeal, and since they have free attorneys, every defendant appeals every case in which they're found guilty. Even some of them who have pled guilty, because they have a right to appeal the sentence and they do it.

So that you have a mass of junk appeals, appeals with no merit, appeals completely frivolous, but nevertheless, they're there and they go into the record. So the Ninth Circuit will report that only nineteen percent of all cases are reversed. That means that they include all, the junk, the ones that would never be reversed anyhow and those in which really there are issues. If you throw out all the junk appeals and go down to the cases on their merits, the Ninth Circuit in 1983 reversed, I think it was forty-three percent of the decisions of the district judges. You might as well flip a coin. They don't look for finality. They look, sometimes you'd swear they look for an excuse to reverse, you really would.

One judge, Boochever [Robert Boochever] from Alaska, during that year, his percentage of reversals was fifty-three percent. So the district judges were wrong fifty-three percent of the time in Boochever's mind. Now when you have people like that, and I was talking incidentally to a judge of another Court of Appeals, the Federal Court of Appeals, that's Washington, D. C., whom I know well, and he told me that back there the Ninth Circuit had become the laughing stock of all the circuits, back in Washington, D. C.

S: Well, from a layman's viewpoint, you know, it's undermining the respect for the judicial and I'm sure it's demoralizing for the judicial to say the least.

P: Well, all I have to say I've said.

S: Well, I just had to ask you that and now we can continue on with some more of your cases.

P: Another case that I had, I mentioned earlier, I think, was Pfizer versus Revlon and International Rectifier.

S: No, you hadn't mentioned that.

P: It happened in that same year of 1974. I was at a judicial conference in Coronado and two attorneys, one of whom I knew from the pipe cases many years before, they were Los Angeles attorneys, and they came down to see me and they wanted to know if I wouldn't take over the case of Pfizer versus Revlon and International Rectifier. It was a case involving the drug called doxycycline, the trade name by Pfizer was vibramycin. Back in 1972 when the case started, and it goes back to 1968 or 1969 when Pfizer got a patent on this new doxycycline which was one of the tetracyclines, it was like a second generation tetracycline, and they'd gotten a patent because they had discovered the combination of this drug.

It had immediately proved to be a very effective drug, much more effective in certain types of disease and so forth and problems than any other of the tetracyclines. And it was going so good that International Rectifier decided that they'd like to sell the same drug without paying a royalty for it. So they had...the Italians have no patents on any drugs, you can't get a patent, so they had an Italian who would make the drug exactly on the basis of Pfizer patents and they could sell it much, much cheaper than what Pfizer could sell it. I think Pfizer was selling it for a dollar and they could sell it and make a big profit at sixty cents or even at forty cents.

S: Was this going to be manufactured in Italy and then imported?

P: It was, it was at first. Well, at the time this was going on there had been a suit brought against all of the big drug companies, three different drug companies, including Pfizer and a couple more. So they had three different companies that discovered tetracycline about the same time and they filed within weeks of each other back in about 1968 or 1969, before that perhaps. And then they didn't want to fight among themselves because if that was the case, it couldn't be a proprietary drug. And so they agreed and licensed all the others, a low license fee, but they kept it a proprietary drug. These three got together and allowed Pfizer to get the patent.

That finally came out and then suits were brought forth against them and, all over, on behalf of every hospital, on behalf of every individual who had bought any of the tetracyclines. It ran into the hundreds of millions of dollars. The first offer of the drug companies to settle was a hundred million dollars, but it wasn't settled. Under the system that evolved after the cases that I had, the pipe cases, a law was passed that you could have multi-district litigation panels and if you had multi-district litigation, the same general problem in an area, it would go to a panel and they would assign it to Judge A.

It happened that there were three Lords, judges in the federal courts at that time, two in Philadelphia and one in Minneapolis. The two Lords in Philadelphia were known as the Good Lord and the Bad Lord and over in Minneapolis there was a judge, O. Miles Lord, and his nickname was Oh My Lord. Well, Lord had some tetracycline cases, and he was assigned all of those and he let the world know immediately that the drug companies were going to get the ax. So when Pfizer sued the two companies, International Rectifier was the one that started to make it in the United States and they were the one that got Revlon and its drug outfit to come in and handle it, sell it, because they had a drug branch and they guaranteed that they could practically win up there.

The reason they got Revlon into it was that their attorney got the case transferred on the basis that it was part of the tetracycline conspiracy and they got it transferred to O. Miles Lord. And they knew that they had a cinch with O. Miles Lord, so they got Revlon in on the basis that, "You take over the distribution and we'll manufacture. You just distribute under your brand name at a lower price and we'll handle all the costs up there because we're going to win." And win they did. They went before O. Miles Lord and they got a summary judgment, summary judgment means without trial, against Pfizer on the ground of fraud on the patent office, on the ground that the attorneys of Pfizer had committed fraud on the court.

Well, it was appealed and the Eighth Circuit reversed Oh My Lord and held that there were too many questions of fact to give any summary judgment without a trial on the issue of fraud on the patent office, and there hadn't been any fraud by the attorneys against the court and so they reversed, sent it back and suggested that in view of the attitude of Lord against the Pfizer attorneys some other judge handle it. So these two attorneys came down to me and asked me if I would take over the case, that if I would do that they would have the case transferred back to Los Angeles out of Minneapolis and I could handle the case.

In the decision-making process there are always three factors involved: one is the ego factor, what does this

decision mean to me? how does it affect me? how does it make me look? The other is the emotional factor, "but I love her" or "that dirty so-and-so." And the third is, what does logic and reason tell you you ought to do? I violated my own precepts, my own factors: they wanted me! Ego. They wanted me and I accepted.

And four years later, Eleanor and I spent the winter of 1978-79 in Los Angeles, six months trying Pfizer versus first Revlon. Revlon settled out right away, and then International Rectifier, just on whether or not there had been fraud on the patent office. I wrote a hundred twenty-five page decision finding there was no fraud. All of that took time, too. And then the second phase, damages, was yet to be tried. I said, "I'm through. I'm not going to try anymore. I've had my bellyful of Los Angeles." The ego factor had been completely eroded away.

And they said, "Judge, if you'll just finish it up, you know all about it, if you'll just finish it up, we'll try it in Honolulu." So I said, "Okay." So they tried it six weeks in Honolulu and I gave a judgment of \$55 million for Pfizer against International Rectifier. The company only had about \$35 million in assets, but Pfizer settled with I. R. and got what they felt was reasonable and fair, and I can tell you that International Rectifier nor anyone else is likely to take on Pfizer again. That was the largest patent infringement judgment ever rendered. I didn't know that until afterwards. But that told International Rectifier that they weren't going to go anywhere. So they were through there.

S: Could I ask you something else? Somewhere along the line you mentioned that your appointment as a federal judge is a lifetime appointment. Does this mean that you go forever or do you have a point where you want to retire?

P: Oh, at the age of seventy, or as it is now when your combined number of years that you've served on the bench plus your age equals eighty, you can retire. It used to be that you could retire at the age of seventy if you had ten years or more on the bench, or you could retire at sixty-five if you had fifteen. Seventy was the line.

S: Is there a mandatory retirement?

P: No, there is not. Justice Holmes stayed on until he was ninety-two.

S: Are you going to?

P: My wife wouldn't let me even if I wanted to. No, I am not. Justice Holmes reached the point where he was actually senile during those years. You saw Douglas, who was so sick

and ill that he was completely helpless and hopeless and he was staying on and on until he was finally convinced that he should retire. So he sent in saying that he was retiring. And then after he retired, after that notice went in, he still wanted to sit on the bench, not realizing that he was through, through, through. He could have come down on the court of appeals and sat; he could have come down on the district bench and sat. After Clark retired, Clark tried a case in San Francisco down on the district bench. So that at seventy you can retire, but you don't have to.

In 1974, November 18, when I was seventy, that was the last day that I was an active judge because it means that when you retire, another judge can be appointed to take your place. So you have another judge helping out. You can continue on and work as much as you want to and if you don't want to work, you don't have to. You still get the same pay whether you work or not.

But if you work, you can have your staff and you can have your chambers and so on. I've told Eleanor that when we get our two new judges here and they get their feet in the saddle, I think that I'm going to pack it up. At least instead of working four days a week, I'll knock it off to one day a week to see if they need any help.

S: Well sure, because it's getting close to sixty years now that you've been quite active.

P: I have.

One of the most fun cases has been the McBryde versus the State of Hawaii, the Kauai water case. I won't go into detail on that because you can read all about it. You may have heard all about it. Briefly, the Richardson Court, Abe, the Richardson Court always wanted to change things to be the way they thought it ought to be, namely, they were basically against all "the establishment." And if there was any way that you could give more power to the state, take it away from the private ownership, you did it. one way or another. And that was the Kauai water case.

The case flowed on easily the way in which the water laws had been solidly settled in all of the water law publications around Hawaii, had been settled practically from the time of 1872, and it was held in 1904 that the property which was given under the Mahele [1848] included water rights and included the rights of the alii, even out to the reef and so forth. That was a Supreme Court case then. So water was not something that was owned by the state. The seashore was not something that was owned by the state. That was part of the kingdom going back to the laws of Kamehameha which had been carried on until we became a territory and a state. And all the laws of the kingdom were carried over

into the territory which were not repugnant to the laws of the United States. That's the way it was, federal laws.

So we also have the law that you can't take property from private people, the state can't take property without paying for it, due process. But here came this, there had been a prolonged discord between the state and McBryde and Kilauea and some of the other plantations over there, Lihue and Kailua, one of the other sugar companies. They'd always taken water, from the time of the menehunes, from the wet section over to the dry section. That's the only reason that you have all of those lovely plantations over on Maui. That was why that great big ditch was built by Baldwin back in the eighties, to pick up all of the water which was going down to the sea all along the wet side. That's the only reason you have all the sugar over there. And the reason that Maui County had any water to supply Wailuku, you took it from out of the watersheds over the mountain.

But here came this case in which it was decided after four or five years of hearings before the judge over there on Kauai, who had the various rights to the water. The state was allocated so much rights to the water of this particular stream and so forth down the line. The sugar companies had spent millions of dollars building the plantation ditches and using the water over the dry sections and had all of this money invested; all based upon the fact that you could buy water rights and you were entitled to so much water and so forth.

So some of the defendants appealed, Kilauea didn't even appeal because they were satisfied with what they got. But McBryde did, and Gay and Robinson did and the State appealed. All of a sudden out of the blue, it wasn't even argued, came Abe's decision with Richardson and Levinson [Bernard Levinson], with only Marumoto [Masaji Marumoto] saying, "No, no, no, this is all wrong." Abe wrote that because the missionaries came from New England and therefore the water laws of New England were intended to be incorporated into the water laws of Hawaii, in the constitution of 1846 at the time of the great Mahele and so forth. When the king reserved to himself the fructus of the land and reserved to the natives the right to use water for their taro and animals, that the fructus, it meant that the king reserved all of the water for himself because that was what the missionaries intended to bring over, et cetera. From the word fructus, I'm not kidding you.

And from that logical background Abe held that the state owned all the water, and since the water law of New England, this was the old English common law, was that you can't take water out of the watershed; they didn't have the problem there in England, and you had the riparian rights that you couldn't take water out of the watershed because every person

along every stream had the right to see that water go by, and the only thing you could do was take it out and put it back in, all into the same watershed. So here the state Supreme Court took it all away from the plantations and not alone the plantations, but there were some people who had leases from the state upon which they were raising small crops, small farmers, and they were using water out of the watershed. They would be without water although the state owned their cropland and the state had leased them with the idea that they (the small farmers) had bought water rights because they thus had so much water they thought they were entitled to.

All that water and use of dry land was gone without paying them a dime. The attorneys over on the state side were dumbfounded and Kilauea came in and said, "Look, we never even appealed and now you're taking away from us. We had no hearing at all." And they, the plantations and small farmers, said that all of this was unconstitutional and they wanted to argue the matter. The court, three judges, Richardson, Abe, Menor, refused to allow them to argue the constitutional problem of taking property without compensation and affirmed their judgment. This time Levinson somewhere had a new idea and he wrote a dissent. As I said in my own decision on the matter, it was probably Levinson's best work that he'd ever put out. I heard later that he hadn't done it, his law clerk had done it. (laughs) It's true. It was told to me with great glee. Levinson's dead now, poor guy, but at least he had his moment of glory given to him by me, that he didn't deserve apparently.

So then it came up here (to the U. S. District Court) on the ground that the action of the state was unconstitutional. And after a full hearing, I wrote a very, very scathing decision and held that they attempted to take it without compensation, without due process and it was unconstitutional and that that state decision was thrown out the window. In it I used a quotation from a very famous law writer called Llewellyn [Karl Nickerson Llewellyn] in one of his publications in which he tells about the court "preparing the victim for the barbecue," and I wrote that as a quote about how in their opinion they (the State Supreme Court justices) had done so-and-so and said that it was obvious that "the court was preparing the victim for the barbecue," and cited Llewellyn. So now that case has been bouncing around. It's gone up before the Court of Appeals. It's now before the Supreme Court of the United States as to whether to grant cert. or not. We'll see what happens down the line. Meanwhile the state has gone down the line, Richardson writing it the next time saying that "Yes, the state owns it all." But the plantations are still using the water.

And the last big case that I had, which you might have seen a lot of publicity on, was the Rewald case. I said from the beginning that Rewald was running a Ponzi scheme, a \$22 million Ponzi scheme, that his connections with the CIA were negligible, and you can see how I got nice publicity out of Jack Anderson, who is about as dishonest a columnist as you can find, who always delights in having his private sources and authorities, and he tells about how "Judge Martin Pence is presiding in the civil case against Rewald filed after his investment firm had been declared bankrupt in 1983. The judge did not reply to requests by my associates (naming them) for his views of the defense attorney's charges that the CIA was involved and despite the judge's mad draconian gag order, and he has ordered Rewald not to discuss the case, I have had access to the documents that Pence ordered sealed for national security reasons and even though the judge declared that Rewald's involvement with the CIA was only slight, he denied Rewald's attorney access to the documents that might have proved these things and they've sealed an affidavit" and so forth and "when Rewald was first charged with two state counts of theft (state counts) by deception in August 1983, bail was set at ten million dollars and the judge froze all of Rewald's personal and business assets. Thus he couldn't pay for a lawyer and make bail."

Well, what he overlooked was the fact that it was a state judge who fixed the bail, I had nothing to do with it. It was a state charge then, I was a federal judge. I had nothing to do with the bail. I was the one who froze his assets in order to protect all of the creditors. But this Anderson made it appear that I was a real stinker, fixed the bail and then fixed it so he couldn't and so forth. "And that the government has subverted Judge Pence's objectivity and impartiality and made him totally incredulous of anything Rewald says." As you know, subsequently, in spite of Anderson and Rewald's great attorney Belli who said that "If the CIA's involved, wild horses couldn't keep me out of this case," Rewald was convicted of ninety-seven counts of fraud, cheating, whoring, everything, using the money of the investors just for his own personal pleasure and aggrandizement.

One thing I did during the course of this, a little bit interesting, I ordered the cancellation of Rewald's three million dollars insurance. At the time that he applied for a million dollars worth of insurance with a couple of insurance companies, and after this thing blew up they wanted to cancel because if he committed suicide there would have been another big claim. The first time he wanted to get a million dollars insurance he reported at that time that he was worth \$200,000 and that he had been a graduate of the University of Michigan and he gave an account of all his assets. He owned this big piece of property and so forth. A year later, those assets which he listed to the insurance company when he wanted to

increase it by two more million, in a year they had jumped to some six million dollars worth of assets, personal assets, and again he was a graduate of the University of Michigan.

S: Were the policies in effect when he supposedly made that first suicide attempt?

P: Oh yes, they were.

S: They would have had to pay off if he had succeeded?

P: It is highly probable. It's very difficult to prove fraud after the person's dead. But this time he had clearly defrauded, had given a complete false account of all his assets he never did have. He was, I would say, a psychological liar. I don't know if he believed his own lies, but he told them so much that he appeared to. He was a piranha, you know, that's a fish that eats anything that gets into the river. Some of the things just made you sick inside because he would take anybody's money, anytime. His own secretary, one of his secretaries, testified that she had \$26,000 that she had saved for her son's college education. She went to Rewald and told him that was what it was for and Rewald took it from his secretary.

Then there was another woman that he had conned into giving him her power of attorney for a house that she had over on the beach at Kailua, and he went ahead then and had it mortgaged for some \$425,000 and out of that he took some \$265,000 and gave her the balance and never paid anything, and finally she had to sell it in order to get back anything out of the building. That was all she had. That's all she was living on because it rented well. Oh, you can go on and on. He was an evil man. And I was in that with the CIA involvement from 1983 to 1985, three years.

It's been a great life being a judge. It isn't over yet. It's a great life being the husband of Eleanor Talcott Fisher and that's not over yet. Thank you for listening.

END OF TAPE 3/SIDE 2

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THE WATUMULL FOUNDATION ORAL HISTORY PROJECT

The Watumull Foundation Oral History Project began in June of 1971. During the following seventeen months eighty-eight people were taped. These tapes were transcribed but had not been put in final form when the project was suspended at the end of 1972.

In 1979 the project was reactivated and the long process of proofing, final typing and binding began. On the fortieth anniversary of the Watumull Foundation in 1982 the completed histories were delivered to the three repositories.

As the value of these interviews was realized, it was decided to add to the collection. In November of 1985 Alice Sinesky was engaged to interview and edit thirty-three histories that have been recorded to mark the forty-fifth anniversary of the Foundation.

The subjects for the interviews are chosen from all walks of life and are people who are part of and have contributed to the history of Hawaii.

The final transcripts, on acid-free Permalife bond paper and individually Velo-bound, are deposited and are available to scholars and historians at the Hawaii State Archives, the Hamilton Library at the University of Hawaii and the Cooke Library at Punahou School. The tapes are sealed and are not available.

August 1987